

1           And if you could all please rise for the jury.

2                               ---oOo---

3                               JURY PRESENT

4                               ---oOo---

5           COURT ATTENDANT: Department 45 is now in session.  
6           You may be seated.

7           THE COURT: You know, ladies and gentlemen, I want to  
8           let you know we do have some hooks in the back of the  
9           courtroom if you would be more comfortable having your coats  
10          hung up for you, we can do that for you. Yes? You're good?  
11          Okay.

12          Just in the future, for example, it's supposed to rain  
13          later in the week, if you come in it might be better to just  
14          hang them up over there rather than put them on the back of  
15          your chairs.

16          All right. Ms. Clement, please call your first  
17          witness.

18          MS. CLEMENT: Yes, your Honor. The Plaintiffs call  
19          Mr. Budgie Amparo pursuant to Evidence Code 776, this is on  
20          cross.

21          THE COURT: Okay.

22                               (Phone ringing.)

23          THE COURT: Sir, if you would please come forward to  
24          our witness stand. When you get there and after you put  
25          your briefcase down, if you would remain standing and raise  
26          your right hand and face our clerk.

27          THE CLERK: Do you solemnly swear that the testimony  
28          you are about to give in the cause now pending before this

1 Court will be the truth, the whole truth, and nothing but  
2 the truth?

3 THE WITNESS: Yes.

4 THE CLERK: You may have a seat, please.

5 THE WITNESS: Thank you.

6 THE CLERK: Sir, can you state your name and spell it  
7 for the record?

8 THE WITNESS: My name is Budgie Amparo. It's spelled  
9 B, as in boy, u-d, as in David, g, as in George, i-e. Last  
10 name is Amparo, it's spelled A, as in apple, m, as in Mary,  
11 p, as in Peter, a-r-o.

12 THE CLERK: Thank you.

13 THE COURT: Ms. Clement.

14 MS. CLEMENT: Thank you, your Honor.

15 TESTIMONY OF

16 BUDGIE AMPARO, Witness called under Evidence Code section  
17 776 on behalf of the Plaintiffs,

18 CROSS-EXAMINATION

19 By LESLEY A. CLEMENT, Attorney at Law, Counsel on behalf of  
20 the Plaintiffs:

21 Q Mr. Amparo, you are the executive vice president of  
22 quality and risk management, correct?

23 A Yes.

24 Q And you've been the head nurse at Emeritus since you  
25 came to that company in a merger with Summerville in 2007,  
26 correct?

27 A That is correct.

28 Q And prior to that you worked for a company called

1 Summerville that was also assisted living, correct?

2 A Yes.

3 Q Prior to that you worked for Kaiser Permanente for  
4 about a year?

5 A Yes.

6 Q And prior to that you were the lead clinical director  
7 of Mariner Health Care, a skilled nursing facility company,  
8 correct?

9 A Yes.

10 Q And prior to that you worked for three years as the  
11 director of nursing of a skilled nursing facility, correct?

12 A Yes.

13 Q You've also worked as a director of staff development  
14 in a subacute hospital, correct?

15 A Yes.

16 Q And you've also been a staff nurse in a, um, skilled  
17 nursing facility?

18 A Yes.

19 Q And you've been a medical records supervisor in  
20 another skilled facility, correct?

21 A Yes.

22 Q And then prior to that you worked as a staff nurse in  
23 Manila in the Philippines?

24 A That is correct.

25 Q And that's where you received your nursing degree, in  
26 the Philippines?

27 A Yes.

28 Q And when did you first come to the United States?

1 A Um, it was around 1987.

2 Q And from 2007, since the merger with Summerville, you  
3 have at all times been the head nurse for the company  
4 Emeritus?

5 A That is correct.

6 Q And that's how you refer to yourself, correct?

7 A Yes.

8 MS. CLEMENT: We would like to just play a couple of  
9 quick video clips here.

10 **(The following video excerpt was then played in open court:)**

11 Q Are you responsible for -- ultimately responsible for  
12 the resident outcomes at Emeritus as the head nurse?

13 A I'm -- I consider myself the pillar of quality  
14 services. So anything that has to do with, um, resident  
15 care needs, I personally own that.

16 Q Is it your understanding as the head nurse for  
17 Emeritus that Emeritus always needs to comply at a minimum  
18 with the Title 22 regulations for assisted living  
19 facilities?

20 A Yes.

21 Q And is it your understanding that Emeritus always  
22 needs to comply with their own policies and procedures in  
23 their assisted living facilities?

24 A Yes.

25 **(Video stopped.)**

26 MS. CLEMENT: Thank you.

27 Q (By MS. CLEMENT) Now, in addition to your job duties  
28 as the head nurse for Emeritus, you're also an expert

1 witness?

2 A That is correct.

3 Q And you've testified, oh, about ten times or a dozen  
4 times for long-term care facilities, like skilled nursing  
5 facilities, assisted living facility companies, correct?

6 A Yes.

7 Q And in each of those cases you have found for -- as an  
8 expert witness, you have been qualified by the court as an  
9 expert, correct?

10 A Yes.

11 (Phone ringing.)

12 THE COURT: Okay. Ladies and gentlemen, I'm going to  
13 say this again and I'm very serious about this: Please  
14 leave your cell phones off. If you cannot, that goes for  
15 anybody in the room, they will be taken from you.

16 Thank you. Last warning.

17 Q (By MS. CLEMENT) Now, I think -- I'm not quite sure  
18 if I got it -- I lost my train of thought. I apologize.

19 Um, you've always testified for the defendant,  
20 correct?

21 A No.

22 Q Isn't that what you stated in your deposition  
23 testimony, Mr. Amparo?

24 MR. REID: That is argumentative, your Honor.

25 THE COURT: Overruled.

26 THE WITNESS: There was one, um, case that I did for a  
27 plaintiff.

28 Q (By MS. CLEMENT) Did you just forget about that when

1 we had your deposition in Seattle?

2 MR. REID: Objection, your Honor, it assumes facts not  
3 established, it's argumentative.

4 THE COURT: Overruled.

5 THE WITNESS: No.

6 Q (By MS. CLEMENT) In fact, you had your deposition  
7 taken and we have met before in Seattle, correct?

8 A That is correct.

9 Q In this case?

10 A Yes.

11 Q And in this case your deposition was taken over three  
12 different days last year, correct?

13 A Yes.

14 Q And in every case that you testified in on behalf of  
15 the long-term care provider, the nursing home or the  
16 assisted living facility, you've always testified that there  
17 was no breach of the standard of care, that the defendant  
18 was not at fault, correct?

19 A Yes.

20 Q In fact, you also reviewed Joan Boice's records in  
21 this case, correct?

22 A Yes.

23 Q And you found that there was no breach of the standard  
24 of care here?

25 A That is correct.

26 Q Now, you know that Emeritus is a corporation, a  
27 Washington corporation, correct?

28 A Correct.

1 Q And you are a senior executive with the corporation,  
2 correct?

3 A Yes.

4 Q And you know that Emeritus is a corporation, um, that  
5 delivers care to seniors all over the country, correct?

6 A Correct.

7 Q And since you've been with the company they have grown  
8 and basically more than doubled in size, correct?

9 MR. REID: Objection, relevance.

10 THE COURT: Over ruled. It's preliminary.

11 THE WITNESS: Yes.

12 Q (By MS. CLEMENT) And you know that as a nurse of --  
13 more than twenty years?

14 A That is correct.

15 Q You know that, um, Emeritus needs staff, care staff in  
16 its facilities to care for the elderly people that live  
17 there, correct?

18 A Yes.

19 Q And you just can't hire by -- Emeritus can't just hire  
20 anybody to go in and care for the elderly?

21 MR. REID: That is vague and it's argumentative.

22 THE COURT: Sustained.

23 Q (By MS. CLEMENT) Emeritus needs staff to care for the  
24 residents?

25 A Yes.

26 MR. REID: Asked and answered.

27 THE COURT: Sustained.

28 Q (By MS. CLEMENT) Emeritus needs staff who are

1 qualified to care for the residents?

2 A Yes.

3 Q And Emeritus needs staff who are trained to care for  
4 the residents that Emeritus accepts?

5 A Yes.

6 Q And those staff need to be supervised?

7 A Yes.

8 Q And those staff need to have the proper qualifications  
9 to meet the needs of the residents that Emeritus accepts?

10 A Correct.

11 Q And you know that Emeritus always needs to provide  
12 enough staff to meet the needs of each of its residents?

13 A Yes.

14 Q And enough staff means enough both in numbers and  
15 competency?

16 A Yes.

17 Q And that means enough staff on every single shift?

18 A Correct.

19 Q And that's because otherwise the residents's needs may  
20 go unmet?

21 A Yes.

22 Q And what we're really talking about here are safety  
23 issues, correct?

24 MR. REID: That is vague.

25 THE COURT: Overruled.

26 THE WITNESS: Yes.

27 Q (By MS. CLEMENT) The residents need to be safe at all  
28 times?



1 A Yes.

2 Q In order for the residents to be safe, you have to  
3 have enough staff?

4 A Yes.

5 Q And in order for the residents to be safe, Emeritus  
6 needs to comply with the Title 22 regulations?

7 MR. REID: That is overbroad and vague.

8 THE COURT: Sustained.

9 Q (By MS. CLEMENT) Well, you, as the head nurse and as  
10 a long-time nurse working in California, are familiar with  
11 the Title 22 regulations?

12 A Yes.

13 Q And you know those govern Emeritus's assisted living  
14 facilities in California?

15 A Yes.

16 Q And you know that those regulations that relate to  
17 resident care have to be followed?

18 A Yes.

19 Q And you know that in order for the residents to be  
20 safe that those regulations related to resident care have to  
21 be followed?

22 MR. REID: That is vague and it's overbroad.

23 THE COURT: Sustained.

24 Q (By MS. CLEMENT) Are you -- can you think of any  
25 Title 22 regulations that don't have to be followed in  
26 assisted living facilities in California?

27 A No.

28 Q And Emeritus also creates written policies regarding

1 resident care; true?

2 A True.

3 Q And Emeritus has to make sure its employees are  
4 complying with those policies?

5 A Yes.

6 Q And those policies purpose is largely to make sure  
7 that the residents are safe?

8 MR. REID: That's vague.

9 THE COURT: Overruled.

10 THE WITNESS: Yes.

11 Q (By MS. CLEMENT) So in order for the residents to be  
12 safe you need to have compliance with the regulations and  
13 compliance with the policies?

14 MR. REID: It's overbroad and vague and compound and  
15 asked and answered.

16 THE COURT: Sustained.

17 Q (By MS. CLEMENT) As the head nurse for Emeritus you  
18 know that residents coming into Emeritus's facilities are  
19 elderly?

20 A Yes.

21 Q And they are frail?

22 MR. REID: It's overbroad.

23 THE COURT: He can answer yes or no.

24 THE WITNESS: No.

25 Q (By MS. CLEMENT) So are you saying that Emeritus  
26 doesn't take any frail elderly residents into their  
27 facilities in California?

28 A No.

1 Q Well, Emeritus does take frail, elderly residents into  
2 their facilities in California?

3 A Yes.

4 Q And they take residents into their facilities in  
5 California who are dependent on the Emeritus staff to meet  
6 their needs?

7 A Could you repeat the question?

8 Q Yes. Emeritus accepts residents into their  
9 facilities?

10 A Yes.

11 Q Who are frail?

12 A Yes.

13 Q Who are dependent on the staff to meet their needs?

14 A No.

15 Q So you're saying that Emeritus doesn't have any  
16 residents in its assisted living facilities in California  
17 who are dependent on the staff to meet their needs?

18 A It depends.

19 Q What does it depend on?

20 A We have residents that would require assistance and we  
21 are able to retain them. Um, if they have Hospice, um, um,  
22 services that's needed, that is something that we are  
23 allowed to -- to -- to maintain in our property.

24 Q Isn't it true, Mr. Amparo, that all residents in the  
25 Memory Care Units that Emeritus operates in California are  
26 dependent on the staff to help them meet their needs?

27 MR. REID: That's overbroad and vague and may lack  
28 foundation. It's vague as to time.

1           THE COURT: I think the issue here is what does  
2 dependent mean. Perhaps we can start with that.

3           MS. CLEMENT: Okay.

4           Q        (By MS. CLEMENT) Is it your understanding that the  
5 reason that people come to Emeritus to live in your  
6 facilities is because they need help with their activities  
7 of daily living?

8           A        Yes.

9           Q        So they are dependent on other people to help them  
10 meet their activities of daily living?

11          MR. REID: That's vague.

12          THE COURT: Overruled.

13          THE WITNESS: No.

14          Q        (By MS. CLEMENT) So they need help from the staff to  
15 meet their needs of daily activity, how are they going to  
16 get that help?

17          A        Well, to me dependent means -- and I think, your  
18 Honor, you mentioned about the dependent, in my -- in my  
19 understanding, um, dependent is like total. Um, in a  
20 setting like a Memory Care Neighborhood, there are residents  
21 that they are still able to do things for themselves and we  
22 encourage them to do as much as they can because we would  
23 like for them to be able to live as normal a life as  
24 possible. There might be instances wherein we are going to  
25 have to provide cuing, we might have to to some sort of  
26 supervision, but to me, I do not consider that as totally  
27 dependent. That's -- that's where I'm having, um, some  
28 disconnect between dependent and needing some assistance.

1 Q Okay. I don't think I said the word totally  
2 dependent.

3 Did you hear that in my questioning?

4 MR. REID: It's argumentative, your Honor.

5 THE COURT: Sustained.

6 Q (By MS. CLEMENT) Dependent means that they need help  
7 meeting some of their needs or all of their needs, right?

8 MR. REID: It misstates his testimony. It's asked and  
9 answered.

10 THE COURT: Are you reflecting back his testimony or  
11 are you offering a different definition?

12 MS. CLEMENT: I'm offering a different definition,  
13 your Honor.

14 THE COURT: You can answer, if you can.

15 THE WITNESS: Again, I -- I think I tried to explain  
16 how I define dependent versus your definition.

17 Q (By MS. CLEMENT) Okay. Well, why don't we work with  
18 this concept: When someone can't get in or out of bed on  
19 their own, are they dependent on the staff to help them get  
20 out of bed?

21 MR. REID: It's an incomplete hypothetical and vague.

22 THE COURT: Overruled.

23 THE WITNESS: Could you repeat the question? I'm  
24 sorry.

25 MS. CLEMENT: Sure.

26 Q (By MS. CLEMENT) When someone is dependent on a staff  
27 member to help them get in and out of bed on their own, does  
28 that make that person dependent? Does that mean dependent?

1 A Yes.

2 Q When a resident is dependent on the staff to help them  
3 eat, does that mean that that person is dependent on the --

4 A No. I'm sorry. No.

5 Q Okay. So if -- if a resident in a Emeritus facility  
6 needs someone to help them eat, you don't consider that to  
7 be dependent on the staff to eat?

8 A No.

9 Q So do you expect the resident then to just try on  
10 their own to eat and not get any help from the staff?

11 MR. REID: That is vague and argumentative.

12 THE COURT: Overruled. He can answer.

13 THE WITNESS: No.

14 Q (By MS. CLEMENT) So, in fact, if a resident can't eat  
15 on their own they are dependent on having a staff member  
16 there to help them eat?

17 A No.

18 Q If a resident can't go to the toilet by themselves and  
19 they need someone to take them there and help them get  
20 undressed so they can use the toilet, then that person is  
21 dependent on the staff for toileting, correct?

22 A Yes.

23 Q And if a resident cannot get out of a chair on their  
24 own without someone helping them, then they are dependent on  
25 having a staff member, a person help them get in and out of  
26 that chair?

27 A Yes.

28 Q And if a resident cannot brush their teeth on their

1 own, that makes them dependent on a staff member to help  
2 them brush their teeth?

3 A Yes.

4 Q And if -- and if a resident cannot get in and out of  
5 the shower on their own and bathe themselves on their own  
6 and have to have someone stand there with them at all times  
7 and perhaps even wash them, they are dependent on having a  
8 staff member to do that?

9 A Yes.

10 Q But you think that a resident who cannot eat on their  
11 own without help from a staff member is not dependent on a  
12 staff member?

13 A No.

14 Q Maybe we are just confused here.

15 Is it true that an elder in a Emeritus facility who  
16 cannot eat on their own and needs someone to help them eat,  
17 to take the spoon and guide it into their mouth, is that  
18 person dependent on a staff member to help them?

19 A Yes.

20 Q And if there is a resident that does not know how to  
21 get from their room to the dining room to eat, is that  
22 person dependent on staff to get their food in the dining  
23 room?

24 A Yes.

25 Q And if a resident doesn't know how to use a pendant or  
26 a call light to ask for help, is that resident dependent on  
27 the staff to check on them frequently to make sure they are  
28 okay?

1 A Yes.

2 Q And if a resident is continent, meaning that they can  
3 go to the -- hold their urine in their bowels but they can't  
4 get to the toilet on their own, are they dependent on the  
5 staff to help them maintain their continence?

6 A Yes.

7 Q And if a resident needs help getting in and out of a  
8 walker so they can keep up with their ambulation and walking  
9 skills, are they dependent on the staff to help them get  
10 into their walker?

11 A Yes.

12 Q And if a resident needs someone to stand by and assist  
13 them and watch them closely to make sure that they don't  
14 fall when they are using their walker, are they dependent on  
15 having a staff member available to do that with them?

16 A Yes.

17 Q And isn't it true that Emeritus accepts residents who  
18 are dependent as we have just defined those terms and those  
19 particular activities of daily living we have just  
20 discussed?

21 A Yes.

22 Q In fact, isn't it true that that is Emeritus's primary  
23 population is residents who need assistance and are  
24 dependent on someone else to help them in one or more of  
25 their activities of daily living?

26 MR. REID: That is vague and overbroad.

27 THE COURT: Overruled.

28 THE WITNESS: Yes.



1 Q (By MS. CLEMENT) And isn't it true that Emeritus  
2 knows that in order to meet the needs of their residents who  
3 are dependent on staff, that they have to have enough staff  
4 to meet the needs of each of their residents in their  
5 buildings?

6 A Yes.

7 Q And one of the things that Emeritus does is it  
8 promises that it's going to have staff to meet the needs of  
9 all of the residents?

10 MR. REID: That is vague and lacks foundation, it's  
11 overbroad.

12 THE COURT: Overruled.

13 THE WITNESS: Yes.

14 Q (By MS. CLEMENT) And Emeritus is the licensee of the  
15 assisted living facilities it operates in California, like  
16 Emerald Hills in Auburn where Mrs. Boice lived?

17 A Yes.

18 Q So ultimately it's Emeritus's responsibility as a  
19 licensee to ensure that the policies of Emeritus and the  
20 Title 22 regulations are being complied with?

21 A Yes.

22 Q And Emeritus is on an honor system to make sure that  
23 those policies and the Title 22 regulations are complied  
24 with?

25 MR. REID: That is vague, your Honor.

26 THE COURT: Sustained.

27 Q (By MS. CLEMENT) Well, you know that in California  
28 the Department of Social Services is the agency that

1 oversees Emeritus's assisted living facilities, correct?

2 A Yes.

3 Q And since you have been in the assisted living  
4 industry you know that the Department of Social Services use  
5 to come out once every year for a survey, correct?

6 A Correct.

7 Q Now they are only required to come out once every five  
8 years, correct?

9 A Correct.

10 Q And so in that between time, those five years from  
11 survey to survey, Emeritus is on its honor to comply with  
12 those regulations?

13 MR. REID: That is vague and overbroad.

14 THE COURT: Overruled. He can answer.

15 THE WITNESS: Yes.

16 Q (By MS. CLEMENT) And Emeritus is on a honor system to  
17 comply with its own policies and procedures?

18 A Yes.

19 Q In fact, Emeritus is supposed to self-report when they  
20 don't comply with the regulations, correct?

21 A Yes.

22 Q Now, as the head nurse for Emeritus you actually have  
23 never done a staffing analysis of any Emeritus facility to  
24 see if they have enough staff to meet the needs of the  
25 residents, correct?

26 A Correct.

27 Q And even you would agree that the, um, people that are  
28 providing the care to the residents in the facilities are

1 the caregiving staff and the med techs that work there?

2 A Yes.

3 Q And you won't -- and that part of the business of  
4 Emeritus is called quality services?

5 A Yes.

6 Q And you own that, right?

7 A Yes, I do.

8 Q But you don't have any oversight at all to see if  
9 Emeritus's facilities are staffing to meet the level of care  
10 needs for the dependency of the residents that they accept,  
11 correct?

12 A No.

13 Q No, I'm not correct or you don't have --

14 A I have an oversight.

15 Q As you recall in your deposition you told me that you  
16 had no oversight over the staffing to meet the needs of the  
17 residents; do you recall that?

18 MR. REID: That is argumentative, assumes facts not  
19 established.

20 THE COURT: Could Counsel approach, please?

21 (Sidebar conference was held.)

22 MS. CLEMENT: Page 579, deposition volume III, lines 9  
23 through 13.

24 THE COURT: Could I get the lights, please?

25 MR. REID: Could I have one moment to review it, your  
26 Honor? I'm sorry. Could you give me the page and --

27 MS. CLEMENT: Yes. 579, lines 9 through 13.

28 MR. REID: Volume II?

1 MS. CLEMENT: III.

2 MR. REID: No objection, your Honor

3 THE COURT: All right. Please continue.

4 **(The following video excerpt was then played in open court:)**

5 Q Do you do any type of oversight to see that the  
6 California assisted living facilities are staffing to meet  
7 the acuity needs of the residents?

8 A No.

9 **(Video stopped.)**

10 Q Now, Mr. Amparo, you understood that on each occasion  
11 when I took your deposition in, um, Seattle that you were  
12 under oath, under penalty of perjury?

13 A Yes.

14 Q And that was made clear to you at the beginning of  
15 each deposition, correct?

16 A Yes.

17 Q Now, um, as the head clinician for Emeritus you're  
18 also not asked to review the budgets of Emeritus's  
19 facilities to ensure they are providing adequate caregiving  
20 staff to meet the needs of the residents, correct?

21 A Yes.

22 Q And you don't sit in on any senior executive meetings  
23 in which budgets for the clinical operation or caregiving  
24 staff of Emeritus's assisted living facilities are  
25 discussed, correct?

26 A Yes.

27 Q In fact, you don't sit in on any board meetings in  
28 which budgets for the clinical or caregiving staff of

1 Emeritus's assisted living facilities are discussed,  
2 correct?

3 A Yes.

4 Q Now, as a expert in this area of longstanding you  
5 would agree that, um, a facility -- an assisted living  
6 facility should never accept a resident if they don't have  
7 enough caregivers to provide for them?

8 A Yes.

9 Q And you would agree that if the caregivers aren't  
10 trained to meet the needs of the residents you're bringing  
11 in you would never accept that resident?

12 A No.

13 Q Because you agree that quality of the services  
14 Emeritus provides to its residents is dependent on the  
15 training and skills of the staff?

16 A Yes.

17 Q And Emeritus actually has written policies that -- I  
18 apologize.

19 May I start over, your Honor?

20 THE COURT: Yes.

21 Q (By MS. CLEMENT) Emeritus has policies that set forth  
22 the minimum training requirements for the caregiving staff?

23 A Yes.

24 Q And you also know that Title 22 regulations also set  
25 forth minimum training requirements for the caregiving staff  
26 in Emeritus facilities?

27 A Yes.

28 Q And this training is required within the first four

1 weeks of employment?

2 A That's correct.

3 Q And Emeritus has to maintain this record of the  
4 training of the Emeritus caregiving staff in those  
5 employee's personnel files?

6 MR. REID: That calls for a legal opinion and lacks  
7 foundation.

8 THE COURT: Well, he can testify as to what he knows  
9 or doesn't know.

10 THE WITNESS: Could you kindly repeat the question?

11 MS. CLEMENT: Yes.

12 Q (By MS. CLEMENT) You know that Emeritus is supposed  
13 to maintain records of training in the personnel files?

14 A Yes.

15 Q And as the head, the pillar of quality services for  
16 Emeritus, do you have any corporate oversight to make sure  
17 that the caregivers in each of the facilities have this  
18 training?

19 A No.

20 Q Does Emeritus train their med techs and their  
21 caregivers on how to prevent skin breakdown or bed sores?

22 A Yes.

23 Q Isn't it true, Mr. Amparo, that you don't know -- you  
24 don't know if Emeritus trains their caregivers on how to  
25 prevent bed sores, skin breakdown?

26 A I do.

27 MS. CLEMENT: Page 300, 16 through 18.

28 THE COURT: Any objection?

1 MR. REID: No, your Honor.

2 THE COURT: Okay. Lights, please.

3 **(The following video excerpt was then played in open court:)**

4 Q Does Emeritus train their, um, med techs and  
5 caregivers on, um, skin breakdown?

6 A I don't know.

7 **(Video stopped.)**

8 THE COURT: If we can get the lights.

9 Q (By MS. CLEMENT) Now, when a resident moves in you  
10 expect the facility nurse to assess the resident's risk of  
11 falling?

12 A Yes.

13 Q And if the resident is at risk for falling, you expect  
14 the resident nurse -- I think I misspoke. Excuse me. Let  
15 me just clarify something with you.

16 Emeritus has nurses in their facilities that they call  
17 resident care directors?

18 A Yes.

19 Q And in their facilities, um, we can call those the  
20 resident nurses or the facility nurse; is that okay with  
21 you?

22 A Sure.

23 Q Okay. So if a resident is at risk for falling, you  
24 expect the resident nurse to come up with a plan to try to  
25 prevent those falls?

26 A Yes.

27 Q And that plan should be reflected in the resident's  
28 service or care plan, correct?

1 A Yes.

2 Q And that's actually a written document that's put into  
3 the resident's permanent record?

4 A That is correct.

5 Q And when a resident has a fall, you expect the nurse  
6 to develop a plan to prevent further falls, correct?

7 A Yes.

8 Q And that plan is also supposed to be part of the  
9 resident record?

10 A Yes.

11 Q And that plan comes about after the nurse has actually  
12 done an assessment, a physical assessment of the resident?

13 A Yes.

14 Q And that plan is to be developed with the resident and  
15 their family if the resident has dementia?

16 A Yes.

17 Q And that plan is supposed to be carried out?

18 A Yes.

19 Q And that plan is supposed to also be discussed with  
20 the resident's physician, correct?

21 A Correct.

22 Q And when you reviewed Mrs. Boice's record from  
23 Emeritus, you couldn't find any plan to address her risk of  
24 falls, correct?

25 A Not that I remember.

26 Q And you could find no plan in Mrs. Boice's record when  
27 you reviewed it that the nurse had developed any kind of a  
28 care plan to address preventing further falls after she had



1 her fall?

2 A No.

3 Q Is that true?

4 A Yes.

5 Q So these assessments that the nurse does, that's an  
6 important part of keeping the resident safe, correct?

7 A Yes.

8 Q So in order to have safe resident care you need to  
9 make sure that the residents are assessed regularly?

10 A Yes.

11 Q And that means before they move into the facility?

12 A Yes.

13 Q On the day that they move into the facility?

14 A Yes.

15 Q Whenever they have a change in their condition?

16 A Yes.

17 Q And every time this happens the nurse is supposed to  
18 write a note about it?

19 A Yes.

20 Q And there is supposed to be a discussion with the  
21 physician?

22 A Yes.

23 Q And a discussion with the family?

24 A That's correct.

25 Q And whenever a resident goes from walking to not  
26 walking, that's a change in their condition, true?

27 A True.

28 Q That's a significant change, true?

1 A True.

2 MR. REID: That is vague.

3 Q (By MS. CLEMENT) And that is a change that needs to

4 be discussed with the resident's family?

5 A Yes.

6 Q And the nurse needs to do an assessment of that?

7 A Yes.

8 Q She needs to put that into writing?

9 A Yes.

10 Q And that assessment needs to be part of the resident's

11 record?

12 A Yes.

13 Q And a care plan needs to be developed?

14 A Yes.

15 Q And also, once you have got this care plan you don't

16 just stick it in the chart and leave it there, you go out

17 and you talk to the staff about it too, right?

18 A Correct.

19 Q So everybody who is actually delivering the care knows

20 what they are supposed to be doing?

21 A Yes.

22 Q And this is so that the resident doesn't deteriorate,

23 correct?

24 A Yes.

25 Q So in assisted living the term "acuity" -- that is a

26 medical healthcare nursing term, right?

27 A Yes.

28 Q And acuity means the level of care needs a resident

1 has?

2 A Yes.

3 Q And we can shorten that to say acuity means the help a  
4 resident needs to be safe?

5 A Yes.

6 Q And that acuity is based on the resident's ability to  
7 do things for themselves?

8 A Yes.

9 Q And the resident's acuity or level of care determines  
10 how much they have to pay Emeritus to take care of them,  
11 true?

12 A Yes.

13 Q So the more care needs they have, the more Emeritus  
14 charges that resident or their family?

15 MR. REID: Lacks foundation and that would be  
16 overbroad and vague.

17 THE COURT: We need a foundation here as to his  
18 knowledge of the -- of the cost and methods.

19 MS. CLEMENT: Sure.

20 Q (By MS. CLEMENT) As a member of -- the executive vice  
21 president and a member of the senior team, you're aware of  
22 these level of care charges, correct? You participated in  
23 that decision-making, correct?

24 A Not the money component, just the levels of care.

25 Q And you know from your participation in those meetings  
26 about increasing level of care in Emeritus facilities that  
27 higher levels of care were going to lead to charging the  
28 residents more, correct?

1 A Yes.

2 Q And those meetings took place in Seattle at corporate  
3 headquarters?

4 A Yes.

5 Q And as a senior executive as part of that team you  
6 participated in those meetings?

7 A That's correct.

8 Q And you know from your experience of working with  
9 Emeritus since 2007 that, in fact, Emeritus has been on a  
10 push or part of its plan to increase the level of care in  
11 its facilities?

12 A No.

13 Q Isn't it true, Mr. Amparo, that since you have been at  
14 Emeritus, Emeritus Corporate has been giving direction to  
15 its teams in California that they expect them to admit  
16 residents at higher levels of care every quarter?

17 A No.

18 Q Isn't it true, Mr. Amparo, that at least as of 2008  
19 the Emeritus nurses at the divisional and regional level  
20 were being instructed as part of the collaborative team  
21 management at Emeritus that they were going to be expected  
22 in each building to increase the level of care of the  
23 residents that they were bringing into the building?

24 A No.

25 Q Let's talk about that collaborative team management,  
26 that CTM. That is something that you brought over from  
27 Summerville, right?

28 A That is correct.

- 1 Q And that's something you're proud of?
- 2 A Yes.
- 3 Q And that collaborative team management is, um, a tier,  
4 triangle of three -- three parts, correct?
- 5 A Yes.
- 6 Q You have operations, nursing, and sales and marketing?
- 7 A Yes.
- 8 Q And you're at the corporate headquarters, you're at  
9 the top of that collaborative team management for the  
10 nursing side, right?
- 11 A Yes.
- 12 Q And then on the operations side you have got the chief  
13 operating officer?
- 14 A That is correct.
- 15 Q And at the sales and marketing side at corporate  
16 headquarters you have got the executive vice presidents of  
17 sales and marketing, correct?
- 18 A Yes.
- 19 Q And when Mrs. Boice was a resident in 2008, the chief  
20 operating officer was a gentleman named Justin Hutchins?
- 21 A That is correct.
- 22 Q And today that chief operating officer is a gentleman  
23 named Chris Hyatt?
- 24 A Today, yes.
- 25 Q And you've always been the person who has been the  
26 head on the nursing side?
- 27 A That is correct.
- 28 Q And the sales and marketing head executives have been

1 John Cincotta and Jayne Sallerson, correct?

2 A Yes.

3 Q And then when you come down to the next level we have  
4 the level at the -- in northern California, for example, is  
5 the divisional level, correct?

6 A Yes.

7 Q And in California we have got the -- sometimes it's  
8 referred to as the west division, correct?

9 A At some point, yes.

10 Q So we can call it California or the west division, it  
11 means the same thing?

12 A Yes.

13 Q And then at the California division we have another  
14 CTM triangle. We have a vice president of operations?

15 A Yes.

16 Q We have a vice president of quality services or nurse?

17 A Yes.

18 Q And we have a vice president of sales and marketing?

19 A That is correct.

20 Q And when you first started with Emeritus the vice  
21 president of operations in California, Catherine Ratelle?

22 A Yes.

23 Q And then the vice president of nursing or sales and  
24 quality services, Lisa Hulse?

25 A Yes.

26 Q And she still is in that position, correct?

27 A That is correct.

28 Q And sales and marketing, that position has changed but

1 in the beginning it was Angela Neale, correct?

2 A Yes.

3 Q And then you come down next layer in California there  
4 is regions, right?

5 A Yes.

6 Q And in the time that Mrs. Boice was a resident there  
7 were four regions, forty-four facilities?

8 A More or less, yes.

9 Q And today there are, what, five or six regions and  
10 fifty-eight facilities?

11 A Yes.

12 Q And at the regional level Mrs. Boice was in region  
13 one, which is the Sacramento, Auburn, Lodi, Napa, Fairfield,  
14 this whole area?

15 A Yes.

16 Q And in region one when you first started there was a  
17 series of regional directors of operations. You had  
18 Kimberly Kent, then she left, then you had Don Zimmerman,  
19 and then he left, and then you had Rodney Castleberg, and  
20 then he left?

21 A She left.

22 Q She left. Excuse me. Ronda.

23 And then you had Mary Winters, correct?

24 A Yes. Excuse me. Mary Winters is still with us.

25 Q Yes. And when Mary Winters took the job as the  
26 regional director of operations she was also working in  
27 Seattle? She was basically wearing two hats at that time,  
28 correct?

1 A Yes.

2 Q And so for California you had, at times, the regional  
3 director of operations for region one, that position would  
4 be vacant?

5 A I believe so, yes.

6 Q And so then Catherine Ratelle, who was the vice  
7 president of operations for the whole state, she would have  
8 to fill and wear that hat too, correct?

9 A Yes.

10 Q And then we have got this triangle, you have got the  
11 regional director of operations, then you have got your  
12 nurse -- and that is your regional director of quality  
13 services?

14 A Yes.

15 Q And since you have been with the company it was Corlis  
16 Tillman, then she moved, and then it became Doris  
17 Marshall?

18 A Yes.

19 Q And then she left the company, and you got another  
20 nurse to fill in for her, correct?

21 A Yes.

22 Q And the sales and marketing position, that's had a lot  
23 of turnover in that position. You had Melissa Malek and Liz  
24 Breen, and then she left and then so on?

25 A Yes.

26 Q And then we get down to the facility level, and at the  
27 facility level you have got the executive director who is  
28 like the operations person for the building, correct?



1 A Yes.

2 Q Then you have the nurse who is the quality services or  
3 nurse person for the building?

4 A Yes. Or resident care director.

5 Q They are all directors at the facility level, correct?

6 A Yes.

7 Q And then you have -- is it the community relations  
8 director?

9 A Correct.

10 Q And that's the title of the person who is in sales and  
11 marketing, correct?

12 A Correct.

13 Q And isn't it true, Mr. Amparo, that the focus of  
14 Emeritus, since you've been at the company, has been  
15 occupancy? In other words, filling the building with  
16 residents?

17 A No.

18 Q Isn't it true, Mr. Amparo, that corporate from the  
19 very top of the operations to the vice presidents to the  
20 regional people have been telling down at the facility level  
21 that sales comes first?

22 MR. REID: That's vague.

23 THE COURT: Sustained.

24 Q (By MS. CLEMENT) Isn't it true, Mr. Amparo, that you  
25 have seen and participated in communications from corporate  
26 headquarters to the facilities and the regional staff that  
27 sales come first?

28 A No.

1 Q Isn't it true, Mr. Amparo, that you have participated  
2 in communications in which you have told the regional teams  
3 and facility teams that occupancy is number one?

4 A Absolutely not.

5 Q Isn't it true, Mr. Amparo, that you have told the  
6 regional teams and the facility level teams and your  
7 division teams that you need heads in the beds?

8 A No.

9 Q I'm going to go back to acuity for a minute,  
10 Mr. Amparo. Isn't it true that since you have been at  
11 Emeritus there has been an increased need for nurses in  
12 Emeritus buildings on a full-time basis?

13 MR. REID: That's vague, overbroad.

14 THE COURT: Sustained.

15 Q (By MS. CLEMENT) Isn't it true, Mr. Amparo, that you  
16 have actually stated publicly that there is an increased  
17 need for nurses in assisted living?

18 A Yes.

19 Q And isn't it true, Mr. Amparo, that because of the  
20 increasing level of care or acuity of residents in assisted  
21 living that there is an added demand for nurses in assisted  
22 living facilities?

23 A That's one of the factors.

24 Q Is it true you've said that?

25 A Yes.

26 Q And isn't it true, Mr. Amparo, that you have stated  
27 publicly that there is an increased demand for staff  
28 training because of the higher acuity of residents that are

1 being admitted into assisted living?

2 A Yes.

3 Q And isn't it true, Mr. Amparo, that you have stated  
4 that the demand is greater now that staff have regular  
5 performance reviews and skill checks to make sure they can  
6 deliver the care the residents Emeritus brings into their  
7 facilities needs?

8 MR. REID: That is vague as to time, your Honor.

9 THE COURT: I'm sorry, sir?

10 MR. REID: It's vague as to time.

11 THE COURT: Overruled.

12 THE WITNESS: I couldn't remember.

13 Q (By MS. CLEMENT) Now, would you agree that there is  
14 increasing levels of acuity in Emeritus facilities?

15 A It fluctuates.

16 Q Isn't it true that you have stated publicly -- well,  
17 let me go back to that "it fluctuates."

18 Isn't it true, Mr. Amparo, that Emeritus has a plan  
19 that you participated in to increase the level of acuity in  
20 its facilities so it can charge more money to residents?

21 A Absolutely no.

22 Q Isn't it true, Mr. Amparo, that residents with higher  
23 acuity need more staff time?

24 A Possible.

25 Q Isn't it true, Mr. Amparo, that you don't think higher  
26 acuity residents need more staff time?

27 A It depends.

28 Q Page 268, 9 through 13.

1 MR. REID: No objection

2 THE COURT: Go ahead.

3 **(The following video excerpt was then played in open court:)**

4 Q Would you agree that residents in assisted living  
5 facilities that are -- have high complexity or increased  
6 care needs need more staff time?

7 A No.

8 **(Video Stopped.)**

9 Q (By MS. CLEMENT) Isn't it true, Mr. Amparo, that as  
10 the head nurse for the company and a member of the executive  
11 board you knew that in 2008 before Mrs. Boice was admitted  
12 by Emeritus that the head of your collaborative team,  
13 Mr. Hutchins, was advocating that there was an urgent focus  
14 on sales volume at Emeritus facilities?

15 MR. REID: That assumes facts not established and it's  
16 argumentative.

17 THE COURT: He can answer if he knows.

18 THE WITNESS: I can't remember. Sorry.

19 Q (By MS. CLEMENT) Isn't it true, Mr. Amparo, that as a  
20 senior member of the executive team that you've known since  
21 you've been at Emeritus that there has been an urgent focus  
22 in California facilities to fill the beds?

23 MR. REID: It's asked and answered and it's  
24 argumentative and it's -- it's --

25 THE COURT: It's not the exact same language;  
26 objection overruled.

27 THE WITNESS: No.

28 Q (By MS. CLEMENT) Isn't it true, Mr. Amparo, as a

1 senior member of this collaborative team management at  
2 corporate headquarters you participate in calls on the phone  
3 with regional and divisional team members in California in  
4 which you discuss things like the focus on filling the  
5 buildings with residents?

6 A Yes.

7 Q And do you recall being on a conference call with the  
8 California division and regional team, the sales and  
9 marketing team -- because sometimes you participate in those  
10 calls, correct?

11 A Sometimes, yes.

12 Q And you come in on those calls when they have got a  
13 problem, when they are trying to sell someone the building  
14 and they don't know if they can accept that person or not,  
15 then they come to you as the head nurse and ask for your  
16 help and you jump in on those calls, correct?

17 MR. REID: That is vague and argumentative.

18 THE COURT: It's not argumentative but it's compound,  
19 so break it down, please.

20 MS. CLEMENT: Sure.

21 Q (By MS. CLEMENT) You participate on sales and  
22 marketing calls primarily when there is a question of can we  
23 admit this resident or not, right?

24 A Not all of the time.

25 Q Is that a conference call that you do participate in  
26 with the sales and marketing when they have a question about  
27 can we admit this resident or not?

28 A No.

1 Q So you've never participated in any such conference  
2 call with sales and marketing?

3 A Well, now you're saying never. I said not all of the  
4 time.

5 Q I want to talk to you about something called a  
6 physician's report. You're familiar with those, right?

7 A Yes.

8 Q And in California those physician's reports are called  
9 602s, right?

10 A Correct.

11 Q And you know that before a resident admits any --  
12 strike that.

13 You know that a Emeritus facility cannot admit a  
14 resident without having the 602 physician's report done?

15 A Yes.

16 Q In fact, that has to happen before the actual  
17 admission of the resident, correct?

18 A Correct.

19 Q And that's a safety issue, right?

20 A Could be, yes.

21 Q Well, because you know Emeritus assisted living  
22 facilities are not healthcare providers, right?

23 A Right.

24 Q So Emeritus has to comply with the regulations that  
25 require these physician's reports to be done before a  
26 resident is admitted, correct?

27 A Correct.

28 Q And that's because Emeritus itself has to make sure

1 that at all times they are complying with those regulations,  
2 true?

3 MR. REID: That's asked and answered, your Honor.

4 THE COURT: Sustained.

5 MS. CLEMENT: We are going to be looking at Exhibit  
6 Number 12, your Honor.

7 (Joint Exhibit 12 was marked for identification.)

8 MS. CLEMENT: I would ask the witness to turn behind  
9 you and there are exhibit binders and if you could grab  
10 Exhibit Number 12.

11 THE COURT: Okay. Can I just ask you for a moment,  
12 Counsel, I seem to have exhibit binders except for 1 through  
13 32.

14 MS. CLEMENT: May I go grab that for you?

15 THE COURT: Yes.

16 MS. CLEMENT: Okay.

17 Q (By MS. CLEMENT) Can you take a moment to look at  
18 Exhibit 12?

19 A So it's under tab 12, is that how we --

20 Q Yes, sir. Uh-huh.

21 A Okay.

22 Q Are you familiar with that document, sir?

23 A Yes, I am.

24 Q And that's a blank copy of the physician's report  
25 known as the 602, correct?

26 A Yes.

27 MS. CLEMENT: And, um, your Honor, at this time I  
28 would like to move this into evidence.

1 THE COURT: Any objection?

2 MR. REID: No, your Honor.

3 THE COURT: All right. Exhibit 12 is admitted.

4 (Joint Exhibit 12 was admitted into evidence.)

5 Q (By MS. CLEMENT) So this is just a blank version of  
6 this, um, form. This is what the facility has to make sure  
7 that the physician has completed before a resident is  
8 admitted; true?

9 A True.

10 Q And this is -- these physician's reports are important  
11 for assisted living facility residents because they, um,  
12 before accepting a resident Emeritus must determine if they  
13 can legally accept that resident?

14 MR. REID: It's asked and answered, your Honor.

15 THE COURT: It's preliminary, overruled.

16 THE WITNESS: Yes.

17 Q (By MS. CLEMENT) And that's because for the safety of  
18 the residents in Emeritus's non healthcare facilities they  
19 have to, um, make sure that the physician has determined  
20 what health conditions a resident has?

21 A That is correct.

22 Q Because many healthcare conditions are restricted  
23 from -- strike that.

24 If a resident has certain healthcare conditions that  
25 may restrict Emeritus's ability to accept them?

26 A Yes.

27 Q And if a resident has a healthcare condition which is  
28 prohibited that can preclude Emeritus or that will preclude



1 Emeritus from accepting that resident?

2 A Yes.

3 Q And these physician's reports have to be done by a  
4 actual doctor, a medical doctor?

5 A That is correct.

6 Q Because you know the reason for that is to your  
7 understanding that only a doctor can diagnose a resident's  
8 medical conditions?

9 A Yes.

10 Q And you must -- this assessment of the health and  
11 physical restrictions of the resident has to be done by the  
12 doctor before Emeritus considers taking that resident  
13 because that's going to affect what the resident is able to  
14 do for themselves?

15 A Yes.

16 Q And that's also going to determine the type of care  
17 the resident is going to need?

18 A That is correct.

19 Q And according to Emeritus's policy, this physician's  
20 assessment has to actually be done with current information?

21 A Yes.

22 Q And according to Emeritus's policy, this assessment  
23 has to be done 30 days before a resident comes to the  
24 facility, correct?

25 A Yes.

26 Q Because you want to know as a non healthcare provider  
27 whether or not you can meet the needs of those residents,  
28 right?

1 A Correct.

2 Q You want to know what resident issues are so that you  
3 can plan -- come up with a care plan for them, right?

4 A Yes.

5 Q Now, isn't it true that in the fall of 2008 you  
6 participated in a conference call with the California  
7 division sales and marketing team about these resident 602  
8 forms?

9 A I can't remember but (nodding head.)

10 Q Let me see if I can -- it is not uncommon for you to  
11 do that; true?

12 A No, it's not uncommon.

13 Q And let me see if I can refresh your recollection  
14 about this particular call. There was a discussion of a  
15 prospective resident for Emeritus who was turned away by the  
16 facility because that person did not have the 602  
17 physician's report yet; does that refresh your recollection?

18 MR. REID: I'm going to object that there is --  
19 it's -- it lacks foundation, it assumes facts not  
20 established.

21 THE COURT: She is attempting to refresh his  
22 recollection, um, on this. I will let you go a little bit  
23 until I hear what's going on here and then we will see what  
24 we are going to do.

25 THE WITNESS: Could you repeat the question?

26 MS. CLEMENT: I absolutely can.

27 THE WITNESS: I'm sorry.

28 Q (By MS. CLEMENT) You were on a discussion of a

1 prospective resident who was turned away by an Emeritus  
2 assisted living facility in California because that resident  
3 did not have a current physician's report, the 602?

4 THE COURT: Ms. Clement, the question is, do you  
5 recall --

6 MS. CLEMENT: I apologize, your Honor.

7 THE COURT: -- as opposed to testifying as to what, in  
8 fact, may have occurred if you are going to refresh his  
9 recollection.

10 MS. CLEMENT: Thank you.

11 Q (By MS. CLEMENT) Mr. Amparo, do you recall that on  
12 this particular conference call that there was a discussion  
13 of a prospective resident who was turned away from an  
14 Emeritus facility because he did not have the current  
15 physician's report?

16 A I do not recall. Sorry.

17 Q Is it true, Mr. Amparo, that you have been on a call  
18 with a California division sales and marketing team  
19 regarding 602s in which you instructed the participants,  
20 divisional and regional sales and marketing, that you didn't  
21 care if they got the 602s before they admitted residents?

22 A No.

23 Q Isn't it true that you had that call and you told the  
24 participants on that conference call that you wanted heads  
25 in the beds and you didn't care about getting the 602s, we  
26 will get them when we can get them?

27 A Absolutely not.

28 Q Isn't it true that you directed the California team,

1 the regional team in California, that they were to go ahead  
2 and admit residents without the current physician's reports?

3 A No, that is not true.

4 Q And isn't it true that you learned that after this  
5 call that your head of sales and marketing for California,  
6 Angela Neal, began directing facility executive directors in  
7 California that they could admit residents without the 602s,  
8 without the physician's reports?

9 MR. REID: I'm going to object to the question, that  
10 assumes facts not in evidence, it lacks foundation.

11 THE COURT: He can answer yes or no to that question.  
12 It's a isn't it true question.

13 MR. REID: Okay.

14 THE WITNESS: No.

15 THE COURT: Go ahead.

16 THE WITNESS: No.

17 Q (By MS. CLEMENT) Now, when the State does an  
18 investigation into a complaint at a facility, Emeritus  
19 requires that facility to give notice to corporate  
20 headquarters that there has been an investigation, correct?

21 A Yes.

22 Q And you get notice through a form that Emeritus has  
23 created whenever the State comes into one of Emeritus's  
24 buildings?

25 A That is correct.

26 Q And you get notice when there has been a citation  
27 issued by the State?

28 A Yes.

1 Q And isn't it true that you got notice in 2008 that one  
2 of your facilities in California was cited for admitting  
3 residents without 602s?

4 MR. REID: Objection, relevance, your Honor.

5 THE COURT: Counsel approach, please?

6 (Sidebar conference was held.)

7 THE COURT: All right. Ladies and gentlemen, um, we  
8 will let you take your morning break a little bit earlier  
9 now so that you don't have to sit here while I have these  
10 discussions with Counsel. Leave your notebooks on the  
11 chairs. Remember the admonitions.

12 Let's be back ready to go -- um, I'll give you a  
13 little bit longer break while I deal with this -- at a  
14 quarter to. I will see you back here then. Walk around,  
15 get some blood flowing, and get some coffee.

16 **(The following proceedings were held outside the presence of**  
17 **the jury:)**

18 THE COURT: And, Mr. Amparo, you can step down as  
19 well. We will need you back ready to go at a quarter to.  
20 Please try and avoid hanging out anywhere near the jurors  
21 are, okay?

22 THE WITNESS: All right. Thank you.

23 THE COURT: You're welcome.

24 Everyone else can be seated.

25 All right. The objection to the question was, um,  
26 relevance.

27 Brooke, could you go up to the question for me for a  
28 moment, please?

1 (Whereupon the Court Reporter's real-time screen was  
2 accessed.)

3 THE COURT: Okay. The question was, Isn't it true  
4 that, um, the witness got notice in 2008 that one of your,  
5 meaning Emeritus's, facilities in California was cited for  
6 admitting residents without 602s? Mr. Reid objected on the  
7 grounds of relevance.

8           Ms. Clement, what is the relevance of that to this  
9   case? My understanding is it was not the facility that  
10   Mrs. Boice was in.

11 MS. CLEMENT: You're right, your Honor, it was in the  
12 Tracy facility is where the citation was. Ms. Boice was not  
13 admitted with the current 602 pursuant to Emeritus policy,  
14 which means within 30 days prior to admission. Um, in the  
15 Department of Social Services citation, which Mr. Amparo has  
16 testified he received, this goes to the issue of notice.  
17 Um, he is -- he has denied saying that he instructed --

18 THE COURT: Notice that Emeritus's facilities in  
19 California were admitting residents without --

20 MS. CLEMENT: The legally required 602 forms or  
21 physician reports.

22 THE COURT: All right.

23 MS. CLEMENT: He has denied that he told the regional  
24 team, the divisional team to admit without the 602s. After  
25 that call there was a team, um, meeting at the Tracy  
26 facility, and in that meeting the head of sales and  
27 marketing, who was on the call with Mr. Amparo, told the  
28 executive directors and regional staff that were at that

1 meeting to go ahead and admit residents without the 602s.

2 THE COURT: Okay.

3 MS. CLEMENT: And thereafter the State issued a  
4 citation, and they found that they were admitting residents  
5 without the 602s and that a corporate representative had  
6 instructed them to do so.

7 THE COURT: Mr. Reid?

8 MR. REID: Um, I don't -- I don't dispute that if  
9 Ms. Clement can bring a witness in, who I do not know who it  
10 is, to testify that Mr. Amparo said those things, that  
11 person can come in and testify. This is going beyond  
12 however because this -- this citation deals with a different  
13 community, it is a different issue altogether.

14 The reality is that what the circumstances were is  
15 that -- that two residents were admitted on an emergency  
16 basis without a 602. The citation itself acknowledges that  
17 that is appropriate but that there shouldn't be a practice  
18 of taking people without 602s. So what happened afterward  
19 isn't relevant.

20 If Mr. Amparo -- Mr. Amparo has said he didn't say  
21 those things and Ms. Clement can, I guess, put -- she says  
22 she can put evidence on to contradict him, but now we are  
23 going down the path of -- of a specific collateral incident  
24 at a different community that is really different.

25 The issue in our case is that we had a 602 that  
26 complied with the law, the law says it can be up to a year  
27 old, but didn't comply with the -- with the Emeritus policy  
28 that's been presented which says that it should be within 30

1 days. That is the issue to go to the jury, not whether the  
2 Tracy facility on an emergency basis took some people in and  
3 didn't, you know -- that -- that -- it's collateral and it's  
4 not instructive. I -- I think it's a path we shouldn't  
5 journey down.

6 MS. CLEMENT: Well, your Honor, if I can respond.  
7 It's not just the Tracy facility. That just happens to be  
8 the one where they got a citation for it because someone  
9 issued a complaint. It's Emerald Hills, it's, um, other  
10 facilities within the State of California. I'm going to put  
11 witnesses on the stand who are going to testify that this  
12 was the practice of Emeritus and it came from the top of the  
13 company.

14 THE COURT: All right.

15 MS. CLEMENT: And we have, you know, this huge burden  
16 of proof, your Honor, of showing despicable conduct.

17 MR. REID: With regard to Mrs. Boice. And that is --  
18 that is a good example why we shouldn't go down this path.  
19 We are going down a collateral path that is a complete side  
20 show to the issues regarding Mrs. Boice.

21 THE COURT: All right. Essentially the challenge is  
22 relevance and 352?

23 MR. REID: Correct.

24 THE COURT: And the issue of whether or not, um,  
25 Emeritus was engaging or directing its staff to accept  
26 residents without complying with the rules associated with  
27 602 forms is, um, since apparently Mrs. Boice didn't have a  
28 new 602 but she may have had one that complied or didn't



1     comply with some other regulations or complied or didn't  
2     comply with Emeritus policies, is an issue in this case, and  
3     what corporate levels knew or didn't know about the  
4     practices of their staff with respect to this is an issue in  
5     this case. It may ultimately turn out that what they did  
6     was okay or it may ultimately turn out that what they did  
7     was not okay. I'm not going to pass on that at this point.  
8     There is relevance to this case.

9             The 352 analysis, is the probative value outweighed by  
10     any prejudicial value, and in this case what I'm hearing  
11     Mr. Reid say is it's going to take us down on some  
12     collateral issues on a path sideways, so to speak. I think  
13     there is probative value here. There is also some issues of  
14     straying into collateral issues.

15            So here's -- here's how I'm going to balance that:  
16     I'm going to allow the question, but, um, we are going to go  
17     question-by-question on this very carefully, and when I  
18     get -- when I think we have gotten to the point where we are  
19     straying way beyond where we need to go, um, I will cut it  
20     off.

21            I do think that this raises an issue for us though  
22     that we are going to be facing perhaps throughout the case  
23     which is -- and we have talked about this in the motions in  
24     limine -- how many of these other incidents, whatever they  
25     might be, and this is not one of the nine that was brought  
26     to my attention early on in this case, um, how many of these  
27     other incidents are within the realm of relevance and don't  
28     fall out because of a 352 analysis? I can only do this

1 based on what I know as we go along, so I'm hoping I'm not  
2 going to get hit with a lot more of these, um, but I don't  
3 know. In any event, I'm going to allow it at this point.

4 We need to take our break so our staff can take our  
5 break. We will be back at a quarter to.

6 MS. CLEMENT: Your Honor, just quickly. I'm sorry. I  
7 just want to, in all fairness to you, I want to alert you  
8 that I'm going to talk about the Mary Kasuba incident with  
9 this witness which puts them on notice of under-staffing in  
10 the Mary Kasuba letter.

11 I'm going to talk to him about the, um --

12 THE COURT: Well, again, you know, we didn't go into  
13 that in great detail so I'm going to have to rule as we go  
14 along --

15 MS. CLEMENT: Okay. I just wanted to give you a heads  
16 up.

17 THE COURT: -- on this.

18 MS. CLEMENT: Okay.

19 THE COURT: And I will be listening carefully.

20 You know, in order to expedite as we go along, there  
21 needs to be a fairly good foundation here for me; otherwise,  
22 um, I won't be able to rule in a more expedited manner. So  
23 I just caution you that I need to hear a fairly solid  
24 foundation and because of the 1101(b) issues that we were  
25 talking about just generally speaking.

26 MS. CLEMENT: Okay.

27 THE COURT: Okay. We are on break.

28 MS. CLEMENT: Thank you, Judge.

MR. REID: Can I just clarify real quick? On this line of questioning, you're -- you're going to blow the whistle when you think we have gone too far? I don't need to keep objecting?

THE COURT: Well, you can clearly object if you feel you need to. I don't want to stop you from doing that.

MR. REID: Okay.

THE COURT: But what I'm telling you is I will cut it off. I will overrule you until the point that I feel it needs to be cut off, but I don't think Ms. Clement wants to keep hearing tons and tons of objections from you, so she needs to be mindful of how she asks her questions.

MR. REID: Okay. Thank you, your Honor.

THE COURT: Okay. We are on recess.

(Recess.)

(Whereupon the court reporters switched.)

1           **(The following proceedings were then had in open**  
2 **court, in the presence of the jury.)**

3           THE COURT ATTENDANT: Please be seated and come to  
4 order. Court is again in session.

5           THE COURT: All right. Miss Clement, please  
6 proceed.

7           MS. CLEMENT: Thank you, your Honor.

8           Q.        (By MS. CLEMENT) Now, you well know that the  
9 Department of Social Services is the agency in California  
10 that regulates Emeritus' assisted living facilities?

11          A.        Yes.

12          Q.        And when -- and you also understand that when the  
13 Department of Social Services comes into a facility to  
14 investigate a complaint, they issue a citation or a  
15 deficiency?

16          A.        Yes.

17          Q.        And that -- it's true that you as the head of  
18 quality, the head nurse for Emeritus, are kept apprised of  
19 deficiencies that are going on in Emeritus' facilities?

20          A.        That is correct.

21          Q.        And, in fact, back in 2008, you kept a database of  
22 citations and deficiencies that you'd received from the  
23 State?

24          A.        Yes.

25          Q.        And you had access to that database?

26          A.        I do.

27          Q.        In fact, you give presentations to Emeritus'  
28 collaborative team members about these pattern of

1 deficiencies and citations?

2 A. Yes.

3 Q. And it's part of your job as the head nurse for  
4 Emeritus to know if Emeritus' facilities are being cited  
5 for deficiencies and citations?

6 A. Yes.

7 Q. And you would consider it a serious issue if  
8 Emeritus -- divisional, or executives at corporate, or even  
9 a regional person was telling facilities to go ahead and  
10 admit residents without the required 602 physician reports?

11 MR. REID: It's an incomplete hypothetical and  
12 vague.

13 THE COURT: Overruled.

14 THE WITNESS: No.

15 Q. (By MS. CLEMENT) No, you wouldn't think that would  
16 be serious?

17 A. No, I thought the question was if I'm aware that  
18 they said that they could --

19 Q. Oh, no. Let me --

20 A. I'm sorry.

21 Q. Let me state it again.

22 You would consider it a serious issue if Emeritus at  
23 the corporate headquarters or the divisional level or even  
24 a regional level was telling its facilities in California  
25 to go ahead and admit people without the 602 physician  
26 reports?

27 A. Yeah, that's serious.

28 Q. Now, you knew -- strike that.

1           In California, at your Tracy assisted living  
2 facility, isn't it true that Emeritus was cited by the  
3 State for accepting residents without the 602 forms?

4       A.       I probably need to see the actual document.

5       Q.       Do you remember that Emeritus was cited in  
6 California for admitting residents without the required 602  
7 physicians' reports?

8       A.       Possibly.

9       Q.       And do you remember that the State in its  
10 investigation found that it was Emeritus' corporate  
11 representatives that were telling the facility staff to  
12 admit residents without the required physicians' reports?

13      A.       I refer to the deficiency that was issued.  
14 (Verbatim.)

15      Q.       Do you remember that that's exactly what happened?

16      A.       As I sit here today, I don't.

17      Q.       Do you remember telling your divisional sales team  
18 and your regional sales team in California to "go ahead and  
19 admit residents without the physicians' reports" -- in the  
20 fall of 2008 and the summer of 2008 -- "we'll worry about  
21 getting those reports later"?

22           MR. REID: It's asked and answered, your Honor.

23           THE COURT: Sustained.

24      Q.       (By MS. CLEMENT) Do you remember telling your  
25 divisional and regional team members to tell the facilities  
26 that they could admit someone without a 602 report and that  
27 corporate, your department, would make a decision about  
28 their acceptability after the resident had been admitted?

1 A. No.

2 Q. Now, in addition to getting a physician's report,  
3 there's other assessments that have to take place before  
4 Emeritus accepts someone into one of their facilities,  
5 correct?

6 A. Correct.

7 Q. And these assessments -- these are called  
8 "assessments," right?

9 A. Assessments or evaluation.

10 Q. Okay. And these assessments have to be done by  
11 someone who's qualified to do an assessment, correct?

12 A. Yes.

13 Q. And the purpose for doing these assessments is to  
14 make sure that the facility has the right kind of staff and  
15 that the building itself can accommodate this type of  
16 resident?

17 A. That's one of the reasons, yes.

18 Q. And it's your preference that it's actually a nurse  
19 who does this assessment of the resident, true?

20 A. It is preferred. That is correct.

21 Q. And the reason it's preferred is because that nurse  
22 has the training and qualifications to actually do an  
23 assessment?

24 A. Yes.

25 Q. And you know that as a nurse yourself, correct?

26 A. Correct.

27 Q. And one of the assessments that Emeritus is required  
28 to do before accepting a resident is a functional

1 assessment?

2 A. Yes.

3 Q. And they're required to do this functional  
4 assessment before they sign a contract with a family or a  
5 resident and agree to accept them, true?

6 MR. REID: It's vague.

7 THE COURT: He can answer.

8 THE WITNESS: Yes.

9 Q. (By MS. CLEMENT) And in order to do this functional  
10 assessment, you actually have to meet the potential  
11 resident, right?

12 A. Yes.

13 THE COURT: It might be helpful to find out what a  
14 functional assessment is.

15 MS. CLEMENT: Well, let's talk about that.

16 Q. (By MS. CLEMENT) A functional assessment is  
17 assessing whether someone's physical abilities -- what  
18 their physical abilities are, correct?

19 A. Yes.

20 Q. It also includes things like how -- can they eat on  
21 their own? (Coughing.) Excuse me.

22 A. Yes.

23 Q. Can they walk on their own?

24 A. Yes.

25 Q. Can they bathe themselves?

26 A. Yes.

27 Q. Can they toilet themselves?

28 A. Correct.



1 Q. Can they do their own hygiene, brush their teeth?

2 A. Yes.

3 Q. Wash their face?

4 A. Yes.

5 Q. Take a shower?

6 A. Yes.

7 Q. Wash their hair?

8 A. Yes.

9 Q. And these functional assessments are important,  
10 right?

11 A. Yes, it is.

12 Q. Because you have to evaluate the suitability of the  
13 resident before you sign the contract?

14 MR. REID: It's asked and answered, your Honor.

15 THE COURT: Sustained.

16 Q. (By MS. CLEMENT) You have to determine -- strike  
17 that.

18 You have to do this functional assessment to make  
19 sure that you have the facility staff in numbers,  
20 qualifications, training, and supervision before you agree  
21 to take them, right?

22 MR. REID: I think it's asked and answered, your  
23 Honor.

24 THE COURT: Sustained.

25 Let's move into a different area, please.

26 Q. (By MS. CLEMENT) Well, one of the reasons for doing  
27 a functional assessment is to determine if the resident has  
28 dementia, right?

1 A. Yes.

2 Q. Because residents with dementia need more  
3 supervision and assistance?

4 MR. REID: It's overbroad.

5 THE COURT: Overruled.

6 THE WITNESS: Not all the time.

7 Q. (By MS. CLEMENT) The reason for doing a functional  
8 assessment is to determine if a resident can get out of bed  
9 independently?

10 A. Yes.

11 Q. Because you know that the rule is, in California, if  
12 a resident can't get in and out of bed independently then  
13 they are technically bedridden?

14 A. Yes.

15 Q. So those bedridden residents are going to need extra  
16 care by the staff to help them get in and out of bed?

17 A. Yes.

18 Q. And they're going to need help in case of an  
19 emergency?

20 A. Yes.

21 Q. For example, if there's a fire in the building,  
22 those people in your building who are bedridden are not  
23 going to necessarily be able to get out without help,  
24 right?

25 A. Right.

26 Q. So you've got to have enough staff there to  
27 accommodate those bedridden residents, true?

28 A. True.

1 Q. You also have to, in a functional assessment,  
2 determine if a resident needs to have someone to help them  
3 get out of their chair?

4 A. Yes.

5 Q. To use their walker?

6 A. Yes.

7 Q. Because you know as a nurse that you want your  
8 residents to be able to keep their mobility, true?

9 A. Yes.

10 Q. And all these aspects of the functional assessment  
11 are necessary to determine initially so that the facility  
12 can evaluate if they can take this person with the staff  
13 they have?

14 MR. REID: Asked and answered.

15 THE COURT: Sustained.

16 Q. (By MS. CLEMENT) I'm going to shift to a different  
17 topic now. And that's the quality of care metrics or the  
18 measurements that you use to consider your job as the head  
19 nurse at Emeritus. Okay?

20 A. Okay.

21 MS. CLEMENT: We're going to run the same clips from  
22 the opening, your Honor. We'll run the same clips from the  
23 opening, your Honor.

24 THE COURT: Okay. Can we get a page and line  
25 number, please.

26 MS. CLEMENT: Sure.

27 THE COURT: And I assume, Mr. Reid, there's no  
28 objection to these clips.

1 MR. REID: Correct, your Honor.

2 THE COURT: All right. Thank you.

3 MS. CLEMENT: 263:13 to 270 -- two --

4 THE COURT REPORTER: I need you to repeat it. I'm  
5 sorry.

6 MS. CLEMENT: I apologize.

7 236:13 to 237:2. 259:5, 259:9.

8 THE COURT: All right. Thank you.

9 **(The following video excerpt was then played in open**  
10 **court):**

11 Q. As the chief clinician for Emeritus, it's your  
12 responsibility to ensure the quality of care is being  
13 delivered to the residents; is that correct?

14 A. Yes.

15 Q. And the way that you measure the quality of care is  
16 to track the residents developing skin breakdown,  
17 unexplained weight loss, unusual number of falls, or falls  
18 with injury, residents developing incontinence, regulatory  
19 compliance, employee safety, and the CPR results; is that  
20 correct?

21 A. Yes.

22 Q. Do you look at any documentation on a monthly basis  
23 to measure the quality of care in these metrics, skin  
24 breakdown, weight loss, fall occurrence, and incontinence?

25 A. No.

26 **(Video stopped.)**

27 Q. (By MS. CLEMENT) Now, Mr. Amparo, you do require  
28 the -- or you have as the head of nursing for Emeritus,

1 from 2007, when you first started at the company, through  
2 last year, you required all of your divisional nurses, the  
3 Vice President of Quality Services like Miss Hulse here, to  
4 submit a monthly report to you, correct?

5 A. Correct.

6 Q. And that report was called the Senior Vice President  
7 Quality Risk and Monthly Performance Review, correct?

8 A. Yes.

9 Q. So shorthand that, you call those the VPQS reports,  
10 true?

11 A. True.

12 Q. And in those reports you do actually have her and  
13 her counterparts around the country report to you on  
14 metrics that are important to you?

15 A. Yes.

16 Q. And those metrics include the risk of media  
17 exposure?

18 A. Yes.

19 Q. And those metrics include residents that are  
20 requesting their own records?

21 A. Yes.

22 Q. And those metrics include the number of communities  
23 that have regulatory exposure, in other words, the State  
24 might be coming in or has come into the building?

25 A. Yes.

26 Q. And those metrics also include looking at residents  
27 potentially moving out of Emeritus' buildings?

28 A. Yes.

1 MS. CLEMENT: And if we could look at, your Honor,  
2 Exhibit 207.

3 Q. (By MS. CLEMENT) And, sir, that should be behind  
4 you. There's a binder there that will be entitled 207.

5 A. Can I --

6 Q. Yes. Right behind you.

7 **(Joint Exhibit Number 207 was marked for**  
8 **identification.)**

9 Q. (By MS. CLEMENT) If you could turn to the August of  
10 2008. And I believe it's at about page 38 of the documents  
11 of Exhibit 207.

12 MS. CLEMENT: On the top left-hand side, your Honor,  
13 is the month and year. And the Bates page is 9352.

14 THE COURT: I don't think it would be 9352. What --  
15 mine starts at 9507.

16 THE WITNESS: And then on mine, August 2008 has  
17 9521.

18 MS. CLEMENT: May I approach, your Honor?

19 THE COURT: Yes.

20 MR. REID: (Coughing.) Excuse me.

21 MS. CLEMENT: Yes, I see that. There seems to be  
22 multiple different versions.

23 Just two pages ahead of that, your Honor...

24 Do you see that, your Honor? There's two versions  
25 of August 2008.

26 THE COURT: Okay. I have it.

27 MS. CLEMENT: Thank you.

28 Q. (By MS. CLEMENT) If you'd turn to the second page

1 of that.

2 And you review these every month, correct?

3 A. Yes.

4 Q. And you review them from all the different divisions  
5 around the country, correct?

6 A. Correct.

7 Q. And move-outs, that's something that you track,  
8 correct?

9 A. Yes.

10 Q. That's something that you require your nurses to  
11 track, correct?

12 A. Yes.

13 Q. And you come up with -- and you require your nurses  
14 to come up with initiatives or plans, along with the  
15 collaborative team, sales and marketing, and operations, to  
16 prevent residents from moving out of the facilities,  
17 correct?

18 A. Yes.

19 Q. And the term that you use is called, "close the back  
20 door"?

21 A. Yes.

22 Q. So once a resident moves in, it's Emeritus' policy  
23 to try to "close the back door" and not let them move out,  
24 true?

25 A. No.

26 MR. REID: (Coughing.) Sorry.

27 Q. (By MS. CLEMENT) Isn't it true, Mr. Amparo, that at  
28 your direction the primary focus of the nurses who work for

1 Emeritus is to "close the back door" and prevent residents  
2 from moving out?

3 A. No.

4 Q. In terms of the percentage of time that your nurses  
5 are spending working at facilities and at the regional  
6 level, wouldn't you agree that the majority of their time  
7 is trying to prevent residents from moving out by  
8 creating -- creative ways to view the regulations?

9 MR. REID: I'm going to object that it's overbroad  
10 and it lacks foundation. And vague.

11 THE COURT: Sustained.

12 Q. (By MS. CLEMENT) Isn't it true, Mr. Amparo, that  
13 you instruct your nurses to try to work in the gray areas  
14 of the regulations?

15 MR. REID: That's vague, your Honor.

16 THE COURT: That's pretty straightforward. They  
17 either do or they don't use that terminology.

18 He can answer.

19 THE WITNESS: No.

20 Q. (By MS. CLEMENT) Isn't it true, Mr. Amparo, that  
21 you have heard from divisional members of the collaborative  
22 team management, regional members, and facility level  
23 employees that there is not enough staff at Emeritus'  
24 facilities in California to meet the needs of the  
25 residents?

26 A. No.

27 Q. Isn't it true, Mr. Amparo, that you have learned  
28 since you've been at Emeritus, from divisional, regional



1 and facility level employees that they are uncomfortable  
2 with this concept that Emeritus has of "closing the back  
3 door" and keeping residents in the facility who need to  
4 move out?

5 MR. REID: It's argumentative and misstates his  
6 testimony and compound.

7 THE COURT: Well, there's been no testimony with  
8 respect to this particular question. But it is compound.

9 Q. (By MS. CLEMENT) Isn't it true, Mr. Amparo, that  
10 you have been told that the nurses who work for you are  
11 uncomfortable with Emeritus' policy of "closing the back  
12 door" to prevent residents from moving out?

13 A. No.

14 MR. REID: It's the same question, your Honor. It's  
15 compound.

16 THE COURT: Overruled. He's answered.

17 THE WITNESS: Sorry.

18 THE COURT: That's okay.

19 Q. (By MS. CLEMENT) Isn't it true, Mr. Amparo, that  
20 you have been told by your nurses that they are not  
21 comfortable with what they see as intense pressure to fill  
22 the beds coming from you as the head nurse?

23 A. No.

24 Q. Isn't it true, Mr. Amparo, that you have told your  
25 nurses that the only legitimate move-out of an Emeritus  
26 resident is death?

27 A. Absolutely not.

28 Q. Isn't it true, Mr. Amparo, that you've instructed

1 your nurses that when there is a potential move-out, they  
2 have to notify the regional nurse and the divisional nurse  
3 about that resident and the conditions that might cause the  
4 resident to move out?

5 A. Yes.

6 Q. And isn't it true that you track those move-outs  
7 every week?

8 A. At times.

9 Q. Isn't it true, Mr. Amparo, that since you've been  
10 with Emeritus that there are weekly conference calls in  
11 which the discussion of potential resident move-outs is  
12 discussed with the nurses, sales, and operations?

13 A. No.

14 Q. Isn't it true, Mr. Amparo, that there are weekly  
15 discussions in which you participate at looking at how many  
16 residents are moving out of Emeritus' facilities?

17 A. No.

18 Q. Isn't it true, Mr. Amparo, that the policy at  
19 Emeritus with regard to moving -- residents moving out is  
20 once the family or the resident's decided to move out, the  
21 family's encouraged to leave their belongings in the  
22 facility so that another month's rent can be collected by  
23 Emeritus?

24 A. Not that I'm aware of.

25 Q. Isn't it true that it's Emeritus' policy to try to  
26 hold over residents who should be moved out of the  
27 facilities because their level of care is too high, to  
28 delay that move-out until the next calendar month?

1           MR. REID: I'm not sure I understood the question,  
2 your Honor.

3           THE COURT: Perhaps you can rephrase it --

4           MS. CLEMENT: I will, your Honor.

5           THE COURT: -- more directly.

6           MS. CLEMENT: I will.

7 Q.       (By MS. CLEMENT) Isn't it true it's Emeritus'  
8 policy to not put a move-out that is required because a  
9 resident is too high a level of care, to not put that  
10 move-out into motion until the next calendar month so  
11 another month's rent can be collected?

12 A.       No.

13 Q.       Isn't it true, Mr. Amparo, that in fact Emeritus  
14 trains its staff to suggest hospice for family members to  
15 keep residents in the facility who Emeritus cannot care  
16 for?

17 A.       No.

18 Q.       Isn't it true, Mr. Amparo, that in California the  
19 facilities are given guidelines and told that they have a  
20 budget of only three residents per month that they're  
21 allowed to move out?

22 A.       I don't know.

23 Q.       You don't know that?

24 A.       No.

25 Q.       Isn't it true that you directed your divisional  
26 nurse, Lisa Hulse, to monitor move-outs closely with the  
27 executive directors and the regional nurses at every  
28 facility in California, to make sure that those move-outs

1 don't exceed three to three-and-a-half residents per month?

2 A. No.

3 Q. So you don't know anything about this Emeritus  
4 policy of requiring the staff in the facilities to have no  
5 more than three or three-and-a-half residents moving out  
6 each month?

7 MR. REID: The question is argumentative and assumes  
8 facts not established.

9 THE COURT: At this stage, there's a lot of facts  
10 not in evidence since this is our very first witness. But  
11 he says he doesn't know about it.

12 I don't find it argumentative. But we have had him  
13 answer this question. So let's move on.

14 Q. (By MS. CLEMENT) Now, Mr. Amparo, you know about  
15 the Memory Care Units that Emeritus operates in their  
16 assisted living facilities in California?

17 A. Yes.

18 Q. And those Memory Care Units are sometimes  
19 stand-alone units or stand-alone buildings, where everyone  
20 in the building has dementia, true?

21 A. True.

22 Q. And there's other facilities, like Emerald Hills,  
23 that have multiple stories of assisted living and then  
24 stand-alone memory care -- or, excuse me. I'll rephrase.

25 Emerald Hills is a building that has three levels or  
26 three stories of assisted living and a separate delayed  
27 egress or a not quite locked assisted -- Memory Care Unit?

28 A. Yes.

1 Q. And you understand that Emeritus promises more care  
2 to the residents who move into the Memory Care Units?

3 A. I'm sorry. Could you repeat the question.

4 Q. Yes.

5 You understand that families that put their  
6 residents -- their loved ones in Emeritus' Memory Care  
7 Units are promised more care by Emeritus?

8 A. No.

9 Q. And you understand that Emeritus promises an  
10 activities-focused program in the dementia units it  
11 operates?

12 A. Yes.

13 Q. And you understand the reason that Emeritus makes  
14 this promise of activities-focused programing in its Memory  
15 Care Units is that it is a marketing tool to make families  
16 want to place their residents (verbatim) in Emeritus'  
17 facilities?

18 A. Yes, that's one factor.

19 Q. But you personally -- or strike that.

20 And you had -- when Mrs. Boice was a resident, you  
21 had a National Memory Care Director by the name of Crystal  
22 Roberts, true?

23 A. True.

24 Q. And she was an expert in dementia care?

25 A. Yes, she is.

26 Q. And you've actually even written letters to the  
27 Department of Social Services in California, talking up her  
28 credentials, true?

1 A. True.

2 Q. And she's someone who assisted in devising the  
3 Emeritus Join Their Journey program for the dementia care,  
4 correct?

5 A. Yeah. She's one of those people.

6 Q. And you were part of that group, too, true?

7 A. Yes.

8 Q. And you're also part of the group that approves the  
9 written policies of Emeritus, true?

10 A. Yes.

11 Q. And that Join Their Journey program, that's also  
12 part of a marketing that Emeritus uses to encourage  
13 families to place their loved ones in Emeritus' dementia  
14 care units?

15 A. I think so.

16 Q. And the marketing that Emeritus does for the  
17 dementia care units includes telling families that the  
18 staff are highly trained?

19 A. Since it's marketing, I couldn't speak for what they  
20 say to their clients or potential clients.

21 Q. But you are a part of this collaborative team  
22 management, right?

23 A. Yes.

24 Q. But the marketing department who prepares the  
25 marketing materials for the websites and the brochures,  
26 they don't come and ask you if, in fact, what they're  
27 putting in their materials is true, right?

28 A. Sometimes they do.

1 Q. So sometimes they do and sometimes they don't?

2 A. Depending on the content.

3 Q. Well, when Emeritus was putting out their -- in  
4 their website and brochures that the staff in the Memory  
5 Care Units were highly trained, did they come ask you?

6 A. Well, depending on which brochure you're talking  
7 about. Because there were brochures that were already in  
8 place when Emeritus and Summerville merged, and there were  
9 also new brochures that were coming in during that time.

10 Q. Now, when Mrs. Boice was a resident in the fall of  
11 2008, the merger had happened for more than a year, true?

12 A. True.

13 Q. And my question is: When Mrs. Boice was a resident  
14 and the marketing materials were out, available then for  
15 the families to review, did the marketing department come  
16 to you and say, "Is it okay if we put in the materials that  
17 the staff are highly trained?"

18 A. Not for those brochures.

19 Q. Now, going back to this activities-focused  
20 programing. Emeritus promises that the residents in their  
21 Memory Care Units are going to be involved in daily  
22 activities, true?

23 A. True.

24 Q. And that those activities are going to be  
25 individualized, based on the resident's needs and interests  
26 and desires?

27 A. That's correct.

28 Q. And that is so important for people with dementia.

1           You know that as a nurse, true?

2     A.       Absolutely.

3     Q.       Because you know as a nurse that people with  
4     dementia need to have stimulation that's appropriate for  
5     them?

6     A.       Yes.

7     Q.       And you know as a nurse that when people don't get  
8     stimulation from dementia and are left alone with nothing  
9     to do, that they can become depressed?

10    A.       Possible.

11    Q.       And that they can shrink into themselves and become  
12    isolated?

13    A.       Possible.

14    Q.       And isn't it true that your National Memory Care  
15    Director, Crystal Roberts, came to you and she asked you  
16    for an activities director for all of the Emeritus Memory  
17    Care Units?

18    A.       I couldn't remember.

19    Q.       Isn't it true that she asked you for that and you  
20    said no?

21    A.       No, that's not true.

22    Q.       Because the memory -- the Emeritus facilities like  
23    Emerald Hills that have a Memory Care Unit, that serve up  
24    to 18 dementia residents, they don't have their own  
25    activities director, correct?

26           MR. REID: The question is vague and compound, I  
27    think.

28           THE COURT: Overruled.



1 THE WITNESS: Kindly repeat the question, please.

2 MS. CLEMENT: Yes.

3 Q. (By MS. CLEMENT) The Emeritus facilities like  
4 Emerald Hills that have assisted living with three stories  
5 of residents on one side and a Memory Care Unit serving up  
6 to 18 dementia residents on the other do not have their own  
7 activities director for the Memory Care Unit, correct?

8 A. I'm not sure if they do or they don't.

9 Q. Well, isn't that exactly what Crystal Roberts came  
10 to you and asked you for?

11 MR. REID: It's asked and answered.  
12 Asked and answered.

13 THE COURT: It's not the same question.  
14 He can answer.

15 THE WITNESS: No.

16 Q. (By MS. CLEMENT) Isn't it true that in the Memory  
17 Care Units at facilities like Emerald Hills, the  
18 activities-focused program is supposed to be carried out by  
19 the individual caregivers themselves?

20 MR. REID: It may lack foundation, your Honor.

21 THE COURT: Overruled.

22 THE WITNESS: They're definitely going to take part  
23 in executing those.

24 Q. (By MS. CLEMENT) Well, isn't it true that you as  
25 the head nurse, responsible for the caregiving staff, know  
26 that in the Memory Care Units the resident assistants or  
27 caregivers are the ones that are responsible for ensuring  
28 that the residents get these daily activities?

1 A. Yes, they're one of them.

2 Q. Well, who is the other one?

3 A. Everybody's responsible for that. Because when you  
4 have a resident in that setting, basically the caregivers  
5 are the ones directly involved with their care. They're  
6 more familiar with the residents. They know their  
7 personalities. They know their likes and dislikes. But we  
8 also involve other staff members, whether you're a  
9 housekeeping, whether you're a dietary person, whether  
10 you're an executive director. We make it a point to make  
11 sure that they all do take part in providing those  
12 services.

13 Q. Oh, okay. So you're saying that the facility  
14 custodian is an activities director?

15 MR. REID: It's argumentative, your Honor.

16 THE COURT: Overruled.

17 THE WITNESS: No.

18 Q. (By MS. CLEMENT) The housekeeping staff, are they  
19 activities directors?

20 A. No.

21 Q. The kitchen staff that are cooking the meals, are  
22 they activities directors?

23 A. No.

24 Q. Are the maintenance people that are clipping the  
25 yard and keeping things -- painting when there's holes and  
26 filling holes in the building, are they activities  
27 directors?

28 A. No.

1 Q. But isn't it true, Mr. Amparo, that the caregiver's  
2 primary responsibility is supposed to be meeting the needs  
3 of the residents in their activities of daily living,  
4 making sure they get food, that they go to the toilet, they  
5 get something to drink, that they have time to help them  
6 ambulate, that they are bathed?

7 A. Yes.

8 Q. And that in facilities like Emerald Hills, in  
9 addition to all those caregiving duties for 17 residents  
10 with dementia, they have to do those residents' laundry?

11 A. I'm sorry?

12 Q. Isn't it true that those caregivers, in addition to  
13 all the caregiving duties, they also have to do the laundry  
14 for the residents?

15 A. Not that I'm aware of.

16 Q. Isn't it true that the caregivers also have to do  
17 housekeeping and clean the rooms of the residents?

18 A. Not that I'm aware of.

19 Q. Isn't it true that they also have to take those  
20 residents to the dining hall and pass out their meal trays,  
21 as well as their caregiving duties?

22 A. Yes.

23 Q. Now, isn't it true, Mr. Amparo, that Emeritus  
24 advertises that they have a nurse available in their  
25 facilities to care for the residents?

26 A. Yes.

27 Q. And isn't it true that Emeritus actually does not  
28 provide full-time nurses in their facilities in California?

1 A. Say that question again. I'm sorry.

2 Q. Isn't it true that Emeritus actually doesn't provide  
3 full-time nurses in its facilities?

4 A. We do.

5 Q. So what's your definition then of a full-time nurse?

6 A. A nurse who's at the capacity of a resident care  
7 director, who would work at the community for about 40  
8 hours a week.

9 Q. So is it your testimony that all the Emeritus  
10 facilities in California, since you've been working for  
11 Emeritus, have had a full-time nurse in them, working 40  
12 hours a week?

13 A. That is our expectation.

14 MS. CLEMENT: That's not exactly my question. So  
15 I'll move to strike as nonresponsive.

16 THE COURT: Sustained.

17 Q. (By MS. CLEMENT) Isn't it true, Mr. Amparo, that  
18 Emeritus had not had a full-time nurse working 40 hours a  
19 week since you've been in the company in each of its  
20 facilities?

21 A. That's not true.

22 Q. So you're saying all the facilities in California  
23 always have a full-time nurse working 40 hours a week?

24 A. Not always. There might be times where we have  
25 openings, when there's turnover, but it's our attempt to  
26 still provide service that's necessary to meet the needs of  
27 our residents.

28 Q. Isn't it true, Mr. Amparo, that in order to cut

1 costs, Emeritus has from time to time gone away from using  
2 nurses in their building altogether?

3 A. No.

4 Q. Isn't it true, Mr. Amparo, to save money, Emeritus  
5 has gone months at a time with no nurses in their  
6 buildings, in California?

7 A. It is true that there might be occasions where there  
8 would be no nurses, but we try our very best to recruit and  
9 make use of other resources that are available, again, to  
10 meet the needs of our residents.

11 Q. What do you mean by that, "other resources"?

12 A. Well, the size of our company, in California, we  
13 have a lot of sister communities. We also have regional  
14 nurses that are available. Lisa Hulse, who is our  
15 Vice President of Quality & Risk Management make it a point  
16 to make herself available. So when I say "resources," the  
17 size of our company allows us to make use of all those  
18 other resources, if that is a service that's not available  
19 in the community, in the absence -- temporary absence of a  
20 nurse.

21 Q. Do you track how long each facility goes without a  
22 nurse?

23 A. No, I don't.

24 Q. Do you have Lisa Hulse, your divisional nurse, track  
25 how long they go without a nurse?

26 A. Not that I know of.

27 Q. Why not?

28 A. Well, tracking is different from knowing whether

1 there's an opening or not. And a lot of this discussion  
2 when there's opening, a discussion would be taking place  
3 between community staff. It could be with a executive  
4 director, and then discussion with a regional nurse, and  
5 Lisa. So in terms of are they aware, are they always being  
6 informed about these openings, I'm not sure. But we just  
7 don't track them.

8 Q. Yeah. Well, when you look on this exhibit, 207, do  
9 you see anywhere on the exhibit where you're tracking -- is  
10 there a spot there to track when there's no nurse?

11 A. No.

12 Q. In any of the 44 and now 58 facilities Emeritus  
13 operates?

14 A. No.

15 Q. That's something you could easily have a line in  
16 there for her to track that, right?

17 A. Yes, or another discipline could do it.

18 Q. Well, what does that mean, "another discipline could  
19 do it"?

20 A. Human resources.

21 Q. Right. But human resources isn't responsible for  
22 quality of care, correct?

23 A. Yes. But they're a part of our collaborative team.

24 Q. Now, Mr. Amparo, as part of this collaborative team,  
25 that includes at the facility level the nurse, right?

26 A. Yes.

27 Q. And you've told me that you've never had any notice  
28 from anyone at the divisional, regional, or facility level

1 that Emeritus' facilities are understaffed, right?

2 A. Not that I know of.

3 Q. Okay. Well, let's turn to Exhibit Number 39.

4 **(Joint Exhibit Number 39 was marked for**  
5 **identification.)**

6 Q. (By MS. CLEMENT) Do you need a hand with that? It  
7 should be on the shelf behind you there.

8 A. Okay. Thank you.

9 Q. Now, this Exhibit 39 is a letter from Mary Kasuba,  
10 the Resident Care Director at Emerald Hills, true?

11 A. True.

12 Q. And you read Mary Kasuba's letter, true?

13 A. True.

14 MS. CLEMENT: And, your Honor, I'd like to play the  
15 video clip that we played in the opening with regard to  
16 this.

17 THE COURT: Okay. What page and line, please, from  
18 the deposition?

19 MS. CLEMENT: Page 171, lines 1 through 4.

20 168, lines 14 through 25.

21 166:24, 167:3.

22 364:11, 364:18.

23 And while I'm doing that, the witness might --

24 Q. (By MS. CLEMENT) Mr. Amparo, you might want to take  
25 a moment to refresh yourself on the letter.

26 A. Sure. Thank you.

27 MS. CLEMENT: Uh-huh.

28 **(The following video excerpt was then played in open**

1     **court) :**

2     Q.       And did you feel that when you read Mrs. Kasuba's  
3     letter that she had serious concerns about the safety of  
4     the residents at Emerald Hills?

5     A.       Yes.

6     Q.       Was it your understanding that one of Mrs. Kasuba's  
7     concerns was that there was not enough staff to cover any  
8     part of the day-to-day staffing needs to give residents  
9     their quality of care that Emerald Hills advertises since  
10    she started work with Emeritus?

11    A.       Yes.

12    Q.       And did she also, to your understanding, let you  
13    know in her letter that she didn't think there was enough  
14    staff in the kitchen and housekeeping, resident assistants,  
15    or the med techs?

16    A.       Yes.

17    Q.       And was it your understanding that one of Mary  
18    Kasuba's concerns was that there was inadequate numbers of  
19    staff who were trained to administer resident medications?

20    A.       Yes.

21    Q.       When you read Mary Kasuba's letter of October 12th,  
22    2007 back in 2007, did you make a recommendation that  
23    Emerald Hills facility not admit any more residents until  
24    the staffing situation could be assessed and addressed?

25    A.       No.

26            **(Video stopped.)**

27    Q.       (By MS. CLEMENT) Now, you personally didn't do  
28    anything to investigate Mrs. Kasuba's concerns, true?



1 A. That's not true.

2 MS. CLEMENT: Your Honor, page 405, lines 18 through  
3 21.

4 THE COURT: Mr. Reid, any objections?

5 MR. REID: No objection, your Honor.

6 THE COURT: Okay. Go ahead.

7 MS. CLEMENT: Thank you.

8 **(The following video excerpt was then played in open**  
9 **court):**

10 Q. ...to investigate the complaints of understaffing at  
11 Emeritus at Emerald Hills since you've been at Emeritus?

12 A. No.

13 **(Video stopped.)**

14 Q. (By MS. CLEMENT) You understood when you read  
15 Mrs. Kasuba's letter that she told you that there was a  
16 huge shortage of staff at that building?

17 MR. REID: Objection. It's hearsay, your Honor.

18 MS. CLEMENT: It's notice, your Honor.

19 THE COURT: For the purpose of notice in October of  
20 2007. Yes?

21 MS. CLEMENT: Yes, your Honor.

22 MR. REID: It's not relevant.

23 THE COURT: Overruled.

24 Ladies and gentlemen, this question and its answer  
25 are being -- will be allowed for the limited purpose of  
26 providing or determining whether or not the defendant had  
27 notice of staffing issues in the relevant time frame.

28 And, Miss Clement, I'd like you to focus your

1 questions with the dates associated with them, please.

2 MS. CLEMENT: Yes, your Honor. Thank you.

3 Q. (By MS. CLEMENT) On October 12th of 2007, Mary  
4 Kasuba was the nurse at Emerald Hills, true?

5 A. True.

6 Q. And she wrote a letter to the executive directors  
7 and she copied this letter to the Chief Executive Officers,  
8 Dan Baty, Granger Cobb; the Chief Financial Officer,  
9 Raymond Brandstrom; the Chief Operating Officer, Justin  
10 Hutchens; the Executive Vice President of Administration,  
11 Melanie Werdel; yourself, the Executive Vice President of  
12 Quality Services and Risk Management; head of sales at the  
13 executive level, Mr. Cincotta; and three other executives  
14 and directors, Martin Raffae, Jim Hanson, and Eric  
15 Mendelsohn.

16 MR. REID: Objection, your Honor. The question  
17 lacks foundation as phrased.

18 THE COURT: Miss Clement, this witness can only  
19 testify to what he personally knows.

20 MS. CLEMENT: I will rephrase.

21 THE COURT: So the objection is sustained.

22 Q. (By MS. CLEMENT) You received a copy of this  
23 letter, correct?

24 A. Yes.

25 Q. And on the fifth page of this letter it says it's  
26 CC'd, or carbon copied on you, true?

27 A. True.

28 Q. And you read the letter at the time, correct?

1 A. Yes.

2 Q. And at the time you -- in October of 2007, you knew  
3 that the nurse in that building felt that there was a huge  
4 shortage of staff at Emerald Hills. This is the --

5 MS. CLEMENT: Well, at this point, your Honor, I'd  
6 like to move this letter into evidence.

7 I'll withdraw my question.

8 THE COURT: I didn't even get an answer to the  
9 question.

10 MS. CLEMENT: I'm sorry. I withdraw the question  
11 and ask to move it into evidence.

12 MR. REID: I have multiple objections to various  
13 portions of the letter on hearsay grounds, on relevance  
14 grounds, on foundational grounds. And 352, your Honor.

15 THE COURT: Ladies and gentlemen, you're going to  
16 get a little bit longer lunch hour.

17 Leave your notebooks on the chairs. Remember the  
18 admonitions. I'll see you back ready to go at 1:30.

19 Sir, we'll see you at 1:30.

20 **(The following proceedings were then had in open**  
21 **court, outside the presence of the jury.)**

22 THE COURT: All right. Please be seated.

23 Is Miss Kasuba coming in to testify?

24 MS. CLEMENT: Yes, your Honor. This afternoon.

25 THE COURT: All right. With respect to your  
26 objections, may I hear them in order, Mr. Reid.

27 MR. REID: Yes, your Honor.

28 Understanding that the letter itself has been

1 offered as notice, there is hearsay within this hearsay.  
2 There are issues of foundation of certain assertions.  
3 There's issues of relevance with certain assertions in the  
4 letter. 352. 1101.

5 And even for purposes of notice to Mr. Amparo, I  
6 don't believe that the entirety of the letter is -- is  
7 appropriately admitted even for limited purposes.

8 THE COURT: Okay. Well, let's get specific.

9 MR. REID: Mm-hmm.

10 THE COURT: What foundation are we talking about?  
11 Well, let me back up for a moment.

12 Assuming that Miss Harris-Kasuba is going to come in  
13 this afternoon and she's going to testify that she wrote  
14 this letter, and she's going to walk us through whatever  
15 she's going to walk us through, will you have the same  
16 objections then as you have now?

17 MR. REID: I would be objecting to the questions  
18 posed to her.

19 Like this the first paragraph, it says, "I have  
20 witnessed total dysfunction in the way corporation mandates  
21 this building to be run."

22 I have no understanding or basis of what -- how she  
23 knows what the corporation has mandated.

24 THE COURT: I assume she'll tell us.

25 But what I'm trying to figure out is how much of the  
26 objection for the admissibility of this document is founded  
27 upon Miss Harris-Kasuba's explaining what she's writing and  
28 how much of it is something else, where it would transcend

1 even her testimony?

2 MR. REID: It's hard for me to quantify. I'm  
3 looking at the very last sentence on the first page. She  
4 has related some statements and then she says, "This is all  
5 prior to my employment."

6 When she says on page two of the letter, "There has  
7 not been enough staff to cover any part of the day-to-day  
8 staffing needs, including the kitchen, housekeeping," you  
9 know, I question the foundation for that. Maybe she'll  
10 provide that.

11 THE COURT: Okay.

12 MR. REID: But I think that provision may be  
13 hearsay.

14 THE COURT: The way I understand this, this is a  
15 letter she wrote, from what I can tell, as part of her  
16 general resignation letter, laying out all the things that  
17 she thinks might be wrong. And she either has a basis in  
18 foundation for why she thinks that or she's totally wrong.  
19 However, the fact that she wrote this letter and the -- and  
20 her perceptions or thoughts or whatever and what she said,  
21 would that not be admissible?

22 Could she not testify -- in other words, if she said  
23 that Kimberly stepped down because she was too stressed  
24 out -- okay. That's that last paragraph in there.

25 MR. REID: Right.

26 THE COURT: If she says, "That's what Kimberly told  
27 me" or "That's my understanding from five or six other  
28 people," that may all be hearsay. But it is the effect on

1 her as well, and the effect on Mr. Amparo, the effect on  
2 the hearer.

3 I'm trying to understand -- you know, at the end of  
4 the day, when we have both of these witnesses testify,  
5 where are we going to be left with this document? I mean,  
6 I can clearly wait and tell Miss Clement that the admission  
7 of the document has to wait until the authorist comes in  
8 and tells us she wrote the letter and the foundation for  
9 each of the items that she wrote.

10 I'm assuming you all know this from discovery. I  
11 don't know.

12 MR. REID: Actually, I've never talked to the gal,  
13 so I don't know what she's going to say.

14 MS. CLEMENT: Well, your Honor, if I could speak to  
15 that. This letter was produced by Emeritus' own executive  
16 director, Nancy Cordova, in her deposition over -- I don't  
17 know. It's been a year, two years ago. It was the subject  
18 of a 3295 motion. There was a declaration from this  
19 witness.

20 THE COURT: Okay.

21 MS. CLEMENT: Every opportunity was there.

22 THE COURT: Okay. Well, for right now, because what  
23 I have is that this witness received this letter,  
24 therefore, whether or not anything in here is true or not,  
25 he got the letter. And the question is, *What, if*  
26 *anything* -- I think from Miss Clement -- *did he do about*  
27 *anything in this letter?*

28 Right? Isn't that where we're basically going on

1 this?

2 MS. CLEMENT: Exactly, your Honor.

3 THE COURT: Okay. So I think at this stage, if I  
4 might suggest, I would agree that admitting this letter at  
5 this time is premature, because I cannot rule specifically  
6 on any appropriate or inappropriate hearsay objections, and  
7 I cannot advise the jury as to where the limitations might  
8 be or otherwise, and that we wait until after Miss Kasuba  
9 comes in.

10 And you, of course, are free in your questioning to  
11 this witness at this time to ask him any number of  
12 questions that you think you need to ask him about what you  
13 think is appropriate to ask him. And we'll go question by  
14 question as to whether or not that goes to the issue of  
15 notice to him.

16 And ultimately, from my perspective, it doesn't  
17 matter if per se what was -- what she told him was true or  
18 not true. The real issue is did he have notice that these,  
19 quote, "allegations" were being made and, what, if  
20 anything, did he do about it.

21 So that's kind of how I want to proceed on this  
22 letter. And wait until after Miss Harris-Kasuba comes in  
23 and we see where else we're going to go.

24 MS. CLEMENT: Okay.

25 THE COURT: Okay?

26 MR. REID: Very good, your Honor.

27 MS. CLEMENT: Sounds good, your Honor.

28 THE COURT: I'll see you after lunch.

1 MS. CLEMENT: Thank you.  
2 THE COURT: We're in recess.  
3 (Lunch recess.)  
4 (Change of court reporters.)  
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1 TUESDAY, JANUARY 8, 2013

2 AFTERNOON SESSION

3 ---o0o---

4 The matter of JOAN BOICE, by and through her  
5 Successor-in-Interest, ERIC BOICE, and ERIC BOICE, NANCEE  
6 BOICE, and MARK BOICE, individually, Plaintiffs, versus  
7 EMERITUS CORPORATION dba EMERITUS AT EMERALD HILLS,  
8 Defendant, Case Number 34-2009-00063714, came on regularly  
9 this day before Honorable JUDY HOLZER HERSHER, Judge of the  
10 Superior Court of California, for the County of Sacramento,  
11 Department 45.

12 The Plaintiffs, JOAN BOICE, by and through her  
13 Successor-in-Interest, ERIC BOICE, and ERIC BOICE, NANCEE  
14 BOICE and MARK BOICE, were represented by LESLIE A. CLEMENT,  
15 Attorney at Law; VALERIE DAWSON, Attorney at Law; ASHLEY  
16 BAIRD, Attorney at Law; and SEAN LAIRD, Attorney at Law.  
17 The Plaintiffs, ERIC BOICE, NANCEE BOICE and ERIC BOICE were  
18 present.

19 The Defendant, EMERITUS CORPORATION dba EMERITUS AT  
20 EMERALD HILLS, was represented by BRYAN R. REID, Attorney at  
21 Law; RIMA BADAWIYA, Attorney at Law; and KIM M. WELLS,  
22 Attorney at Law.

23 Also present on behalf of the Defendant, EMERITUS  
24 CORPORATION dba EMERITUS AT EMERALD HILLS, was JANET E.  
25 McKINNON, Vice President of Legal Affairs; and LISA HULSE,  
26 Vice President Quality & Risk Management.

27 ---oOo---

28 JURY PRESENT

1 COURT ATTENDANT: All rise. Department 45 is again in  
2 session. You can be seated and come to order. Court is  
3 again in session.

4 THE COURT: All right. Ms. Clement.

5 MS. CLEMENT: Thank you, your Honor.

6 CONTINUED TESTIMONY OF

7 BUDGIE AMPARO, Witness called under Evidence Code section  
8 776 on behalf of the Plaintiffs,

9 RESUMED CROSS-EXAMINATION

10 BY LESLEY A. CLEMENT, Attorney at Law, Counsel on behalf of  
11 the Plaintiffs:

12 Q When you read Ms. Kasuba's letter in October of 2010,  
13 you understood that there were serious concerns by the head  
14 nurse at the facility about the safety of the residents?

15 A Excuse me. You said October 12th, 2010.

16 Q Did I say that? I'm sorry.

17 Um, when you read Ms. Kasuba's letter dated October  
18 12th, 2007 -- I apologize if I said that -- in October of  
19 that year, you understood that Mrs. Kasuba, the head nurse  
20 at Emerald Hills, had serious concerns about residents's  
21 safety?

22 A Yes.

23 Q And you understood that she had -- her biggest  
24 concerns included there being a huge shortage of staff every  
25 day since she worked at the facility?

26 A Not necessarily.

27 Q You don't recall from reading the letter just today  
28 again that she stated that in her letter that that was one

1 of her concerns?

2 A Yes, because you said if it -- if it was her biggest  
3 concern. If you are going to look on paragraph number 3,  
4 um, second line, she also specifically said that, My biggest  
5 concern is the med med room.

6 Q Yes. And she told you that the med room was a sinking  
7 ship with no ballast in place?

8 A Yes.

9 Q And she also told you that she had grave -- very  
10 serious concerns about the training available to the staff  
11 who were passing medications?

12 A That is true.

13 Q And that she asked you for help in getting nurses to  
14 come into the building until she could train the staff that  
15 was there?

16 A Yes.

17 Q And she also told you that the condition of the  
18 medicines that existed in the building were terrible and  
19 that there were medications in her closet in her office that  
20 should have been destroyed three years earlier?

21 A Yes.

22 Q And she told you that the condition of the residents's  
23 charts was such that 80 percent of them had no information  
24 regarding who to contact in case of an emergency for a  
25 family?

26 A Yes.

27 Q And she even told you that in one chart she found the  
28 physician's report, the 602, had been filled out by a family

1 member, not a doctor?

2 A Yes.

3 Q And she told you that there had been a huge shortage  
4 of staff every day that she had worked in that building?

5 A Yes.

6 Q And that there wasn't enough staff to care for the  
7 residents in the way Emeritus advertised?

8 A Yes.

9 Q And she told you that there had been serious  
10 medication errors?

11 A Yes.

12 Q And she told you in her letter that she wanted help  
13 right now from corporate, that she was asking corporate or,  
14 as she put it, city hall for help for Emerald Hills in  
15 Auburn, California?

16 A Yes.

17 Q But you have no documentation showing that you ever  
18 did any investigation into what Mrs. Kasuba told you in her  
19 letter?

20 A That's not true.

21 Q You have no independent recollection of asking or --  
22 strike that.

23 You yourself never picked up the phone and called Mary  
24 Kasuba?

25 A I did not.

26 Q You never reached out to her in any way to ask her or  
27 investigate what was going on at Emerald Hills; true?

28 A True.

1 Q And you have no independent recollection that you ever  
2 asked Lisa Hulse to investigate what Mrs. Kasuba was  
3 relating to you about what was going on at Emerald Hills?

4 A That's correct.

5 Q And you have no documentation that Mrs. Hulse ever did  
6 investigate Mrs. Kasuba's claims?

7 A That's not true.

8 MS. CLEMENT: Your Honor, Counsel, page 372, lines 13  
9 through 16.

10 MR. REID: No objection.

11 **(The following video excerpt was then played in open court:)**

12 Q Do you have any documentation, e-mails or -- do you  
13 have any documentation, e-mails or letters or notes that you  
14 instructed Lisa Hulse to investigate Mary Kasuba's claim?

15 A I do not.

16 **(Video stopped.)**

17 MS. CLEMENT: And, your Honor and Counsel, 372, line  
18 17 through 21.

19 MR. REID: No objection.

20 **(The following video excerpt was then played in open court:)**

21 Q Do you have any information that you received back  
22 from Lisa Hulse in the form of e-mail or any kind of  
23 documentation that indicates that she actually investigated,  
24 um, Mary Kasuba's concerns?

25 A No, I couldn't remember.

26 **(video stopped.)**

27 Q (By MS. CLEMENT) And, actually, Ms. Kasuba told you  
28 in her letter that corporate could accept her resignation if

1 it wouldn't agree to put these safeguards into place and the  
2 same cycle of dysfunction would begin over again and the  
3 results would be the same, state visits, fines, resident  
4 upheaval, staff turnover, etcetera, etcetera, etcetera?

5 A Yes.

6 Q Now, that was in October of 2007. Then in November of  
7 2007 you had a family contact you from Emerald Hills,  
8 correct?

9 A Yes.

10 Q And that family had a loved one who lived there,  
11 correct?

12 A Yes.

13 Q And that family told you in your conversation with  
14 them that they were very upset about a serious medication  
15 error that had occurred with regard to their mother?

16 MR. REID: Objection, relevance.

17 THE COURT: What is the relevance generally?

18 MS. CLEMENT: Notice, your Honor.

19 THE COURT: Of problems with medications?

20 MS. CLEMENT: Yes, your Honor.

21 THE COURT: Is that an issue in this case?

22 MS. CLEMENT: Yes, it is, your Honor.

23 THE COURT: Do you agree?

24 MR. REID: Um, no.

25 THE COURT: Do you intend to present evidence that she  
26 didn't get medications she was supposed to get?

27 MS. CLEMENT: Absolutely, your Honor.

28 THE COURT: All right. Go ahead.

1 Q (By MS. CLEMENT) Mr. Amparo, could you turn, please,  
2 to Exhibit 108? It will be in a different binder. I don't  
3 think you will be using that binder again. You can put that  
4 binder back.

5 (Joint Exhibit 108 was marked for identification.)

6 A Thanks.

7 Q Is this the letter you wrote to the family that  
8 contacted you about serious concerns they had about the care  
9 of their mother at Emerald Hills on November 19th, 2007?

10 A Yes.

11 Q And did you tell this family that you believed that  
12 this lapse in medication for this particular resident was an  
13 isolated event resulting from miscommunication at the  
14 community, the pharmacy, and the family?

15 MR. REID: That is hearsay and relevance, your Honor.

16 THE COURT: Please approach.

17 (Sidebar conference was held.)

18 THE COURT: Let me just take a look at the last  
19 question.

20 (Whereupon the Court Reporter's real-time screen was  
21 accessed.)

22 THE COURT: The objection is overruled. He can  
23 answer.

24 Madam court reporter, if you would readback the last  
25 question, please?

26 (Whereupon the last question was read back as requested.)

27 THE WITNESS: Yes.

28 Q (By MS. CLEMENT) And did you tell the family that you

1 take events like this extremely seriously?

2 A Yes.

3 Q And did you tell this family that you had conducted an  
4 intensive in-service training program led by the senior  
5 quality management personnel throughout all levels of staff  
6 at Emerald Hills?

7 A I didn't say in the letter I. I said we.

8 Q You authored the letter, correct?

9 A Yes.

10 Q When you said we, you meant Emeritus?

11 A Correct.

12 Q And you were the person who put this intensive  
13 in-service training program into place?

14 A I was part of it, yes.

15 Q You instructed it? You directed it?

16 A Yes.

17 Q And the person that you directed to do it was Lisa  
18 Hulse?

19 A That is correct.

20 Q And you told the family that we, Emeritus, have also  
21 instituted additional medication administration control  
22 methods?

23 A Yes.

24 Q And that you never or you did not expect an incident  
25 of this nature to occur in the future?

26 A That is correct.

27 MS. CLEMENT: Your Honor, at this time the Plaintiffs  
28 would move in Exhibit Number 108.



1 MR. REID: The -- the document is hearsay.

2 Um, is it being offered as notice?

3 MS. CLEMENT: Yes, it is, your Honor.

4 MR. REID: For limited purposes of notice?

5 MS. CLEMENT: Yes.

6 MR. REID: Then I have no objection if, um, the jury  
7 is informed of the limitation.

8 THE COURT: All right. I'm going to admit 108 for the  
9 limited purpose of notice.

10 Ladies and gentlemen, what that means is that, um, we  
11 are not here to decide whether or not what was done in this  
12 letter, what happened to this other family is true or not.  
13 That's not our case. The letter is being offered to you and  
14 admitted for the limited purpose that if you believe this or  
15 agree with it that Emeritus was on notice of certain  
16 deficiencies.

17 With that limited purpose, it will be admitted.

18 (Whereupon Joint Exhibit 108 was admitted into evidence.)

19 MS. CLEMENT: Thank you, your Honor.

20 MR. REID: Thank you, your Honor.

21 Q (By MS. CLEMENT) Now I'm going to direct your  
22 attention to Exhibit Number 110. This is an e-mail dated  
23 Monday, November 19th at 10:42 a.m. from Lisa Hulse to you.

24 Now, Lisa Hulse went to Emeritus at your direction in  
25 response to the Agnus Fitch incident?

26 MR. REID: Your Honor --

27 MS. CLEMENT: Strike that. Excuse me, your Honor. I  
28 withdraw. I apologize. Withdraw.

1 (Joint Exhibit 110 was marked for identification.)

2 Q (By MS. CLEMENT) You directed Lisa Hulse to go to  
3 Emerald Hills in response to the family's concern about  
4 medication administration as you stated to the family you  
5 were having senior management in the quality department  
6 investigate; true?

7 A That is one of the reasons, true.

8 Q And at that time there was no nurse at Emerald Hills  
9 working there, correct?

10 A Correct.

11 Q That's because Emeritus had accepted Mary Kasuba's  
12 resignation?

13 A Yes.

14 Q And when Ms. Hulse went to Emeritus Emerald Hills she  
15 reported to you her findings of her investigation; true?

16 A That's true.

17 Q So Ms. Hulse reported to you that staff turnover was a  
18 very -- was a big issue for caregivers and medication care  
19 managers or med techs; true?

20 A True.

21 Q And she reported to you that ownership of the quality  
22 services or nursing department needed strengthening? It's  
23 the third bullet point.

24 A Thank you for pointing that out. Yes.

25 Q And she reported to you that she coached the executive  
26 director, who at that time was Nancy Cordova, on the need to  
27 supervise and audit the med tech staff?

28 A Yes.

1 Q And that she had secured a commitment from Nancy  
2 Cordova to micromanage the med techs?

3 A Yes.

4 Q And she reported to you that the prior nurse, Mary  
5 Kasuba, had been requested to arrange training of the staff  
6 but that hadn't been able to be completed before Emeritus  
7 accepted her resignation?

8 A Yes.

9 Q So you knew in November of 2007 on the 19th when you  
10 wrote the letter to the family about their concerns that, in  
11 fact, there was no nurse who was going to be working in that  
12 building at that time, correct?

13 A As I sit here today I couldn't recall if I remembered  
14 at the time when the letter was -- was -- was completed.

15 Q So you wrote the letter on November 19th of 2007, and  
16 you got the e-mail from Ms. Hulse at 10:42 a.m. on the same  
17 day; true?

18 A Yes.

19 Q And in your, um -- the e-mail you received from  
20 Ms. Hulse she told you that the very next day Emerald Hills  
21 was going to go through an audit, the CPR process, right?

22 A Correct.

23 Q Tell us what's the CPR process?

24 A Um, CPR is an acronym for comprehensive process  
25 review.

26 The comprehensive process review is a process that we  
27 utilize to evaluate systems at our communities involving all  
28 of the disciplines, um, including nursing, operations,

1 dietary, um, activities, all of that. So there would be a  
2 group of people, of individuals, um, it could be at the  
3 regional level, it could be at the divisional level, it  
4 could also be from sister communities, that would go into  
5 the building and evaluate systems, whether systems are in  
6 place or what -- what kind of training, um, the facility,  
7 um, would probably be needing, um, as part of the evaluation  
8 process.

9 So in that process each individual is given an  
10 assignment to do. There would be standards, company  
11 standards, there would be, um, regulatory standards also on  
12 that template as a guide for that individual. So at the end  
13 of the process, um, the team, um, will be summarizing the  
14 findings and report back to the, um, community, um,  
15 leadership, um, as to what their findings are.

16 At the same time we utilize the tool, um, as an  
17 educational tool. So, for instance, you hired a new, um,  
18 dining service manager or somebody in activities, we would  
19 normally pull out a section that's relevant to that  
20 individual so they can make use of that tool not only for  
21 auditing purposes but also for training. I don't know if  
22 that's helpful.

23 Q Okay. And this CPR, comprehensive process review,  
24 this is Emeritus's way of at the corporate level ensuring  
25 that the regulations and the policies of Emeritus are  
26 actually occurring in their facilities?

27 A That's one of the purposes, yes.

28 MS. CLEMENT: At this time, your Honor, I would seek

1 to move into evidence Exhibit 110, the e-mail from Ms. Hulse  
2 to Mr. Amparo.

3 MR. REID: No objection, your Honor.

4 THE COURT: All right. 110 is admitted.

5 (Joint Exhibit 110 was admitted into evidence.)

6 Q (By MS. CLEMENT) Now, these CPRs are supposed to be  
7 done every year, correct?

8 A Yes.

9 Q And they are supposed to be done in every facility?

10 A That is correct.

11 Q And it's the regional nurse's responsibility, um, at  
12 that level, the -- the -- strike that.

13 The regional nurse is the person who puts the team  
14 together to go in and do the CPRs?

15 A Yes. She is the facilitator. He or she is the  
16 facilitator.

17 Q And ultimately it's your responsibility as the head  
18 nurse to make sure that they are getting done?

19 A That is correct.

20 Q And at the California level it's Ms. Hulse's  
21 responsibility to make sure they are being done?

22 A Yes.

23 Q And at the end of each of these CPRs the actual  
24 documents are put together and they are sent to Ms. Hulse  
25 and to you; true?

26 A Not -- not the -- the documents get sent to Ms. Hulse.  
27 What gets to me would be, um, score, a total score.

28 Q Actually it's just a percentage, right?

1 A Um, well, total score. Percentage, yes.

2 Q Well, actually it's just the percentage of the overall  
3 score, correct?

4 A That's true.

5 Q It's not like, for example, I think if I recall  
6 correctly, the CPR is broken down into operations, sales and  
7 marketing, human resources, Workers' Comp, Memory Care Unit,  
8 pharmacy, maintenance, dietary. Am I missing anything?

9 A No. The bigger three -- I call it three big  
10 categories, quality of care, quality of life, um, facility  
11 practices and behavior.

12 Q So did I cover all of the subtopics?

13 A I -- I think so.

14 Q And that data is very important to Emeritus, correct?

15 A Yes.

16 Q Because that is really the only way you're tracking  
17 quality of care on a big level up at your -- in your office,  
18 correct?

19 A I don't know if I would say that's the only, but it's  
20 it's one of the main -- main indicators.

21 Q And each subcategory, for example, pharmacy, that gets  
22 a score?

23 A Yes.

24 Q And then that score is part of the quality services or  
25 nursing aspect of the care; correct?

26 A Yes.

27 Q And the memory care is also part of the quality  
28 services score, correct?

1 A Yes, it is.

2 Q And then there is just a straight quality services  
3 subtopic?

4 A Yeah. Sorry. Sorry. Yes.

5 Q And those three are added together with the other two  
6 subparts and then you get a total percentage, correct?

7 A Yes.

8 Q So you can do really well in operations and marketing  
9 and Workers' Comp and maintenance and do poorly in quality  
10 services and still get a pretty good score, a total  
11 percentage, true?

12 A That's possible. The score is one aspect that you --  
13 you look into, but that is not the only factor that I would  
14 consider.

15 Q Right. But the only thing you get in the VPQS reports  
16 that we looked at, Exhibit 207, is a percentage of the total  
17 score?

18 A In writing, that is true.

19 Q Well, do you or do you not get the CPRs themselves?

20 A No. I only get the scores.

21 Q You only get...

22 A The percentage.

23 Q Right. Okay. Well, during the discovery process we  
24 took your deposition and we asked some questions in  
25 interrogatories. I will turn your attention to Exhibit  
26 Number 60. You might want to keep that binder handy which  
27 you have up there.

28 Do you have that, your Honor?

1 (Joint Exhibit 60 was marked for identification.)

2 THE COURT: Exhibit 60 or --

3 MS. CLEMENT: Exhibit 60, six zero.

4 THE COURT: Okay. I'll get it.

5 MS. CLEMENT: Thank you.

6 And these were interrogatories or written questions  
7 that were sent to Emeritus Corporation. If we look on page  
8 2, that first question it states, State the date of every  
9 comprehensive process review and/or QS cite visit conducted  
10 at Emerald Hills from January 2007 through the present? And  
11 the answer was given in the summer of 2011.

12 And in response, if we look at page 3, starting at  
13 line 3, defendant responds as follows: November 20th, 2007,  
14 and some time in 2009, despite a reasonable inquiry into the  
15 records or CPRs conducted in 2008 and 2010 an inquiry of the  
16 regional directors of quality services during the years  
17 stated, responding party being Emeritus, is unable to  
18 determine whether and/or when a CPR was completed for the  
19 years 2008 or 2010.

20 And then in a supplemental response at line 10  
21 Emeritus stated, Following inquiry of Lisa Hulse, vice  
22 president of quality services the defendant supplements.  
23 2008 CPR. There are no records for an Emerald Hills CPR  
24 conducted in 2008. The --

25 MR. REID: Your Honor, this is hearsay and Counsel is  
26 testifying. Um, I'm not -- I don't think she is using the  
27 discovery appropriately.

28 THE COURT: Well, she is not testifying, but, Counsel,



1 um, she would have the ability to offer the interrogatory  
2 questions and answers into evidence and have them be read to  
3 the jury anyway, so I'm just assuming she is taking that  
4 opportunity right now.

5 MR. REID: That is fine, your Honor.

6 THE COURT: Go ahead.

7 MS. CLEMENT: Thank you.

8 The CPR calendar revealed that a CPR was scheduled to  
9 take place in Emerald Hills in or about October of 2008. In  
10 2008 there was an overlap of regional directors of quality  
11 services who were assigned to Emerald Hills, Corlis Tillman  
12 and Doris Marshall.

13 An inquiry to Doris Marshall revealed that she could  
14 not recall conducting a CPR for Emerald Hills for 2008, and  
15 she was unable to produce to Lisa Hulse the VPQS of such  
16 having been completed. Ms. Marshall stated that Corlis  
17 Tillman may have conducted the CPR in 2008 prior to  
18 Ms. Marshall taking on the region. However, inquiry to  
19 Ms. Tillman revealed that she had not done so and her  
20 computer hard drive, which would have contained all of the  
21 records, had crashed.

22 Finally, inquiry to Ronda Castleberg Smith, regional  
23 director of operations, revealed that although she would  
24 normally participate in CPRs she could not recall whether  
25 one was conducted in 2008.

26 Then moving to page 4 for the 2010 CPR. Following  
27 inquiry of Lisa Hulse, the 2010 CPR for Emerald Hills was  
28 scheduled to be conducted on May 5th of 2010.

1           MR. REID: I will object to this, your Honor, on  
2 relevance grounds and --

3           THE COURT: What's the relevance of the 2010 time  
4 period?

5           MS. CLEMENT: Your Honor, it goes to our burden of  
6 proof with regard to continuing pattern of conduct.

7           THE COURT: Okay. Objection overruled within a  
8 limited timeframe afterward.

9           MS. CLEMENT: I'm stopping here.

10          Following inquiry of Lisa Hulse, the 2010 CPR for  
11 Emerald Hills was scheduled to be conducted on May 5 of  
12 2010. However, there is no record that such was ever  
13 completed and no CPR report for Emerald Hills was found in  
14 2010.

15       Q       (By MS. CLEMENT) Now, you recall at your deposition I  
16 asked you to bring with you the CPRs, correct?

17       A       Correct.

18       Q       And you were able to find a piece of one CPR, correct?

19       A       Correct.

20       Q       And if you look at Exhibit Number 116, that was the  
21 comprehensive process review that you found?

22               (Joint Exhibit 116 was marked for identification.)

23       A       Yes.

24       Q       And the only part of the comprehensive process review  
25 that you were able to find was this part which was about the  
26 pharmacy?

27       A       That's correct.

28       Q       And that's what looks at the medication administration

1 at the facility, true?

2 A True.

3 MS. CLEMENT: Your Honor, at this time Plaintiffs  
4 would seek to move into evidence Exhibit Number 116.

5 THE COURT: Any objection?

6 MR. REID: No, your Honor.

7 THE COURT: All right. 116 is admitted.

8 (Joint Exhibit 116 was admitted into evidence.)

9 MS. CLEMENT: Your Honor, I would like to show it up  
10 on the screen, please?

11 THE COURT: Go ahead.

12 Q (By MS. CLEMENT) So, um, you brought this with you to  
13 your deposition, true?

14 A Yes.

15 Q Okay. And the first page, this is just the cover  
16 sheet for the comprehensive process review?

17 A Yes.

18 Q Okay. And normally, um, there would be 50, 60, 70  
19 pages in a comprehensive process review, correct?

20 A Yes.

21 Q But what you were able to find was only five pages of  
22 the actual audit?

23 A Yes.

24 Q Okay. And, um, next page, please.

25 And this is how you produced it to me, correct?

26 A Yes.

27 Q Not the highlights? I have done that just to help the  
28 jury.

1 A Yes.

2 Q Okay. So we see, um -- I think you explained to me at  
3 your deposition that you -- you apologized for how it came  
4 out with this weird font and it was all blown up; do you  
5 remember that?

6 A Yes.

7 Q Okay. And that was something that concerned you,  
8 right?

9 A Well, because it's not pleasant to the eyes.

10 Q Yes. Right. And normally the pharmacy section  
11 doesn't actually type in after it, um, the name of the  
12 facilities and the year, true?

13 A Yes.

14 Q Is that something you typed in yourself?

15 A No.

16 Q Are you sure?

17 A Yes.

18 Q Okay. So this pharmacy audit, um, conducted the day  
19 after you spoke with that family about the intensive, um,  
20 investigation and in-service just a month after or five  
21 weeks after Mrs. Kasuba gave you the notice of the problems  
22 in the medication room, um, this was done the very following  
23 day, on November 20th of 2007?

24 A I believe so.

25 Q All right. And each column of this audit, um, has a  
26 purpose. So the first column on the left -- but it's all  
27 kind of skewed because of the way it printed out, true?

28 A Yes.

1 Q Okay. So if I may come over here, I think I can  
2 assist in explaining this. This full compliance should be  
3 over in this column here?

4 A True.

5 Q And the full compliance, that means when the auditor  
6 looks at a sample of the residence record, their medication  
7 administration record -- that is what MAR means, right?

8 A Yes.

9 Q When the auditor does a sample and pulls randomly some  
10 records, the facility gets a full compliance, a 5 in this  
11 column when the -- the auditor finds that the facility was  
12 in compliance in their responsibilities as it relates to  
13 medication administration?

14 A Yes.

15 Q And a 3 means, well, they weren't in full compliance,  
16 that is this column, and that means that some things were  
17 okay and some things weren't, it was just partial  
18 compliance?

19 A Yes.

20 Q But in medicine you want to have full compliance in  
21 your administering and administration of medication to frail  
22 elders?

23 A Yes.

24 Q In this column, you can't see it on here because of  
25 the way it printed out for you, but zero means  
26 non-compliance?

27 A Yes.

28 Q Okay. So the first one here, the very first page,

1 this goes over some of the most important aspects of  
2 administering medications to residents; true?

3 A Yes.

4 Q And, um, there was never full compliance on any of the  
5 13 initial items that the auditor checked out, correct?

6 A Correct.

7 Q And there was non-compliance on, it looks like, about  
8 half of them, right?

9 A Yes.

10 Q I mean, they weren't compliant at all with, for  
11 example, the narcotic count, to make sure at the end of each  
12 shift the staff, these med techs who were passing out  
13 narcotics to the residents, were counting to make sure that  
14 they had been given and that they were accurate?

15 A I'm sorry, could you repeat the question?

16 Q Yes.

17 For example, on the narcotic count audit the auditor  
18 found the staff was not counting the narcotics at the end of  
19 each shift as they were required to do?

20 A Yes.

21 Q And, actually, in Emeritus assisted living facilities  
22 you have med techs that are not licensed nurses passing  
23 narcotics out to these elderly people; true?

24 A Yes.

25 Q Including people that have dementia?

26 A Yes.

27 Q Including people like Mrs. Boice?

28 A Yes.

1 Q And the purpose of having a narcotic count at the end  
2 of a shift is to make sure that there is no errors with  
3 these very, um, potentially lethal medications, narcotics;  
4 true?

5 A No, that is not the purpose for the narcotic count.

6 Q Oh, it's not?

7 A No.

8 Q Does the purpose of the narcotic count include making  
9 sure that the staff aren't stealing the narcotics?

10 A Yes.

11 Q And to make sure the residents are getting their  
12 narcotics?

13 A Yes. Based on another document, not that document.

14 Q So we go to the next page and, boy, we don't have any  
15 full compliance on this page either of the audit; true?

16 A Yes.

17 Q And it looks like you're doing a little better than 50  
18 percent here on, um, partial compliance and the rest is  
19 non-compliance; true?

20 A True.

21 Q If we go to the next page again we are all -- the best  
22 we can do is partial compliance, no full compliance at all?

23 A Yes.

24 Q And the next page, page 4, we have got two areas of  
25 full compliance; one that the medications were in a locked  
26 medication refrigerator or the refrigerator was in a locked  
27 area, and the narcotics were kept separate from the  
28 non-controlled medications?

1 A Yes.

2 Q But for the rest of it there was not full compliance  
3 either partial or non, correct?

4 A Correct.

5 Q Okay. Let's go to the last page. And so on the last  
6 page we are back again to no full compliance, partial  
7 compliance and non-compliance; true?

8 A True.

9 Q And the total score was 124?

10 A Yes.

11 Q And Emeritus flunked that pharmacy audit; true?

12 A I'm sorry?

13 Q Emerald Hills flunked the audit, right?

14 A I don't know if I consider it a flunking grade.

15 Q Okay. And, um, after an audit like this is done there  
16 is supposed to be an action plan that is put into place?

17 A Yes.

18 Q And you couldn't find that action plan; true?

19 A That's true.

20 Q And basically would you agree that that comprehensive  
21 process review we just went through confirmed exactly what  
22 Mary Kasuba told you in her letter of October 12th?

23 A I'm not sure if I totally understand the question.

24 Q Well, didn't Emeritus's failure to get compliance on  
25 the pharmacy comprehensive process review a month and a half  
26 after Mary or, let's see, five weeks after Mary wrote you  
27 that letter confirm what she told you about the condition of  
28 the medication administration at Emerald Hills?



1 A Parts of it, yes.

2 Q And, um, you understood then for sure that there were  
3 serious problems with the med techs at Emerald Hills  
4 administering medication to the residents?

5 MR. REID: That's vague, your Honor.

6 THE COURT: Overruled.

7 THE WITNESS: As a result of that follow-up, yes.

8 Q (By MS. CLEMENT) But you never recommended that  
9 Emerald Hills stop admitting new residents until those  
10 problems could be sorted out; true?

11 A True.

12 Q And you didn't do anything to make sure that there  
13 would be a full-time nurse coming into that building and  
14 making sure that the residents were going to get their  
15 medications administered to them by someone who had the  
16 license and the ability and the knowledge to do it; true?

17 A Could you repeat the question?

18 Q Yes. You didn't do anything to ensure that a nurse  
19 was brought into that building to administer medications so  
20 that those residents living there would get their  
21 medications as ordered properly?

22 A No, that's not true.

23 Q What nurse did you bring into that facility after you  
24 got that CPR result?

25 A Well, the question is if I did something about it. I  
26 remember talking to Lisa about the matter and find out what  
27 other resources that are available out there that we could  
28 make use at the community level. And at the community

1 level, um, it's -- it's not required by the State to have  
2 nurses administer or manage medications, but as a company we  
3 have preferred that we have at least a nurse who gets  
4 involved in that process.

5 Q Mr. Amparo, you understand that Emeritus has to  
6 provide the type of staff that the facility residents need  
7 to meet their needs which includes medication  
8 administration?

9 A Yes.

10 Q And if your med techs aren't doing it right, you have  
11 got to bring in someone who can do it; true?

12 MR. REID: That's vague and argumentative.

13 THE COURT: He can answer if he can.

14 THE WITNESS: Kindly repeat the question.

15 Q (By MS. CLEMENT) If your med techs are not  
16 administering medication correctly as identified by that  
17 CPR, it's your responsibility as the pillar of quality  
18 services to make sure that there is a nurse in that building  
19 administering medications so those residents are safe?

20 A Yes.

21 Q And you didn't do that, did you?

22 A I tried to address it, not that I didn't do anything  
23 at all.

24 Q Okay. Well, let's turn to Exhibit Number 111. Before  
25 we get into that exhibit I just want to ask you this  
26 question: Um, you never, as the head of quality services as  
27 the head clinician, the head nurse, you never recommended  
28 after having Mary Kasuba's letter or the family concern

1 letter a month later or this CPR result that Emeritus at  
2 Emerald Hills stop admitting new residents, did you?

3 A No.

4 Q So Exhibit 111, this is an e-mail that you received  
5 from Lisa Hulse now two months later in January 24th of  
6 2008. Do you remember we have been over this letter in your  
7 deposition?

8 (Joint Exhibit 111 was marked for identification.)

9 A Yes.

10 Q And this e-mail from Ms. Hulse talked to you about a  
11 family member, a different family member of Emerald Hills  
12 that had concerns, multiple concerns about the care or the  
13 quality services that Emerald Hills was providing; true?

14 A Yes.

15 Q And, um, in her e-mail to you she told you that this  
16 was a very concerned family member?

17 A Yes.

18 Q And she also told you that she coached, Nancy Cordova,  
19 the executive director, on the best practice of calling  
20 rather than e-mailing a family when they had an e-mail  
21 concern?

22 A Yes.

23 Q And she told you that as a divisional team, meaning  
24 California, they were going to address this practice at the  
25 divisional meeting in February of not putting in writing in  
26 an e-mail to families responses to their very serious  
27 concerns?

28 MR. REID: That question is hearsay and misstates the

1 document.

2 THE COURT: Well, it either is or is not an accurate  
3 representation of the document.

4 MS. CLEMENT: It's not hearsay because it's the -- oh,  
5 sorry. Excuse me, your Honor.

6 THE COURT: Is this document coming into evidence?  
7 Are you offering it?

8 MS. CLEMENT: Yes.

9 THE COURT: Are you going to be objecting to it?

10 MS. CLEMENT: For notice only, your Honor.

11 MR. REID: I do think there is some, um -- this is a  
12 lengthy correspondence, and it's going to have similar  
13 issues as with, um, what we talked about before.

14 THE COURT: Okay. Exhibit 111 runs several pages in  
15 my binder so I'm not quite sure what we are really talking  
16 about here. I'm not sure what your question to this witness  
17 is reflecting.

18 Is it reflecting just the e-mail, the first two pages,  
19 or is it reflecting something else?

20 MS. CLEMENT: It's reflecting the, um, first page,  
21 which is the correspondence between Mr. Amparo and  
22 Ms. Hulse, the correspondence between executive director and  
23 the family member. The second page is the family member's  
24 e-mail to --

25 THE COURT: Just, please, answer the question.

26 MS. CLEMENT: Oh, I'm sorry.

27 THE COURT: Does it just involve the first two pages?

28 MS. CLEMENT: No, it does not, your Honor. It also

1 involves the notice which begins --

2 THE COURT: Okay. It involves the rest of the  
3 document?

4 MS. CLEMENT: Yes, it does. Sorry. Particularly --

5 THE COURT: Just a moment.

6 Could you scroll up to the question, please?

7 (Whereupon the Court Reporter's real-time screen was  
8 accessed.)

9 THE COURT: All right. Ms. Clement, part of the  
10 objection here is that you are reflecting statements from  
11 the document, um, as opposed to asking what she was told  
12 or -- I'm sorry -- what he was told by another person at  
13 Emeritus. So you're pulling us into the document before we  
14 have time to really consider the exact language of  
15 admissibility of the document.

16 So I'm going to going to sustain the objection on the  
17 grounds of foundation and hearsay but allow you to try and  
18 clear this up anyway you can.

19 MS. CLEMENT: Okay. Thank you, your Honor.

20 Q (By MS. CLEMENT) Was it, um, the practice at Emeritus  
21 to instruct the facility and regional and divisional, um,  
22 team members to rather than put in writing communications  
23 with family members when they had concerns but instead to  
24 talk on the phone about it?

25 A No.

26 Q Isn't it true, Mr. Amparo, that that's exactly what  
27 you instructed your nurses, your divisional and regional  
28 nurses to do, to not put anything in writing, to talk to

1     them on the phone --

2     A       No.

3     Q       -- when the families had concerns?

4     A       I'm sorry.  No.

5     Q       Now, you reviewed Ms. Hulse's e-mail and the family  
6     member's e-mail and agenda for suggested meeting or  
7     requested meeting that he wanted to have with Nancy Cordova?

8     A       I couldn't remember.  I'm sorry.

9     Q       Well, when you got this e-mail from Ms. Hulse in  
10    January of 2008 you read it, correct?

11    A       Yes.

12    Q       And would it have been your practice to read an e-mail  
13    in its entirety where she is telling you that the family is  
14    very concerned and that she is going to have the vice  
15    president of operations for the whole state go up to the  
16    facility and meet with a family member?

17    A       Yes.

18    Q       And you were in agreement with that decision to have  
19    the vice president of operations, Catherine Ratelle, go up  
20    and try to smooth things over with this family member,  
21    correct?

22           MR. REID:  Objection, that is argumentative.

23           THE COURT:  Overruled.

24           THE WITNESS:  I -- I -- I don't remember.  I'm sorry.

25    Q       (By MS. CLEMENT)  Well, you do remember that the  
26    number one thing that you have your nurses report to you on  
27    a monthly basis in your VPQS reports is risk of media  
28    exposure, correct?

1 A Yes.

2 Q And that is one of the things that this family was  
3 threatening, correct?

4 A I don't recall if they were or they were not.

5 Q Okay. Well, if you look at the last page of the  
6 document, which would be page 6.

7 A Can I ask a question? You said page 6?

8 Q Page 6. Page 6, the last page, the second paragraph.

9 A Because the attachments here I have pages 1 through 4.

10 Q Okay. So it would have been page 4 of that  
11 attachment.

12 A Okay.

13 Q Okay. The second paragraph, Call Curtis, action  
14 reporter?

15 A I see that, yes.

16 Q And that was one of your top priorities for your vice  
17 presidents of quality services, that they report to you the  
18 risk of media exposure, correct?

19 A That's one of them, yes.

20 Q And what exactly does the risk of media exposure have  
21 to do with nursing?

22 A It has a lot of potential impact to, um, resident's,  
23 invasion of their privacy and confidentiality. Um, based  
24 from my experience, when you have media inquiries there is a  
25 lot of questions, there is a lot of talks that could go  
26 around at the community and it is our -- my personal  
27 responsibility and my staff's responsibility to protect our  
28 residents from unnecessary talks, gossips, rumors

1 surrounding it.

2 So I believe that if at least I'm informed about these  
3 matters I could provide guidance, in collaboration with  
4 divisional vice president of quality services, which is Lisa  
5 Hulse, and then she would do the same at the regional and at  
6 the community level. And also in our office we have  
7 individuals who's primarily responsible for media and that's  
8 not my responsibility. The ultimate goal, at least for me  
9 wanting to know that is the bottom line is to protect our  
10 residents.

11 Q Nothing to do with protecting Emeritus's reputation?

12 A That would be part of it.

13 Q So when you look at page 2 of the attachment from this  
14 family member -- do you remember we went over this in your  
15 deposition?

16 A Yes.

17 Q And he made a bullet point list of complaints; true?

18 A True.

19 Q And some of those highlights were, the sixth one down,  
20 chronic staff shortage?

21 A Yes.

22 MR. REID: That's -- it doesn't -- it's incomplete,  
23 your Honor.

24 THE COURT: She said, "One of the."

25 MR. REID: Well, it's a --

26 THE COURT: I see what it says. You can follow-up on  
27 it on your examination.

28 MR. REID: Very good. Thank you.



1 Q (By MS. CLEMENT) And it also says two bullet points  
2 down, Slow response often exceeding 15 minutes after the  
3 emergency bell is rung for bathroom assistance?

4 A Yes.

5 Q And it also indicates three more bullet points down,  
6 Emergency bell answering unit sometimes are not working.  
7 Those working for immediate attention are left unattended?

8 A Yes.

9 Q He also told you on the next bullet point that the  
10 first floor hallway door was locked, trapping residents  
11 upstairs when the elevator was inoperable?

12 A Yes.

13 Q And he also told you that there was inconsistencies in  
14 dispensing the medications?

15 A Yes.

16 Q And he told you that the residents feel taken  
17 advantage of and that management ignores the fact that  
18 residents pay management and staff salaries and operational  
19 costs and that there is a pervasive feeling that management  
20 runs operations for the convenience of staff, not the needs  
21 of the residents?

22 A Yes.

23 Q And he also told you that the executive director cites  
24 corporate restrictions, mandates, budget and staff and  
25 adequacies as excuses for degraded service and stress  
26 amongst the residents?

27 A Yes.

28 Q And that the executive director is often unable --

1     excuse me -- often unavailable to meet or resists scheduling  
2     meetings with individual residents and a stereotype is not  
3     knowing, caring, or willing to address concerns of the  
4     residents?

5     A       Yes.

6     Q       And on the next page he told -- he said that, There  
7     are numerous violations of Emeritus's corporate standards in  
8     their quality of assurance programs as well as the service  
9     contracts with the residents?

10    A       Yes.

11    Q       In the next paragraph he said, While many working  
12    staff do their best to provide for the resident's needs and  
13    desires, their numbers are seriously inadequate?

14    A       Yes.

15    Q       He told you that it seems that management displays a  
16    condescending attitude tending to regard residents as  
17    "them"?

18    A       Yes.

19    Q       So now we are at the end of January 2008 and you've  
20    had the Mary Kasuba letter in October of '07, the family  
21    serious concerns about medication administration in  
22    November, the comprehensive process review at the end of  
23    November, and now this notice to you in late January of  
24    2008, at this point did you think there were serious  
25    problems in staffing in medication administration at  
26    Emeritus at Emerald Hills?

27    A       Yes.

28    Q       Did you do anything personally to investigate?

1 A Yes.

2 Q Do you remember telling me in your deposition that you  
3 didn't?

4 A Yes.

5 Q Do you remember in your deposition you were under  
6 penalty of perjury?

7 A Absolutely.

8 Q And you told me in your deposition that you had done  
9 nothing personally to investigate the allegations of  
10 under-staffing at Emerald Hills?

11 A Yes.

12 Q Now, in Emeritus, as an assisted living facility  
13 operator in California, they are not actually allowed to  
14 administer medications to residents, correct?

15 A Could you repeat the question? I'm sorry.

16 Q Yes. Emeritus, as an assisted living facility  
17 operator in California, is not actually allowed to  
18 administer medications to residents?

19 A Yes.

20 Q That's because they don't have licensed nurses passing  
21 medications?

22 A Yes.

23 Q Or giving insulin injections?

24 A Yes.

25 Q But this is one of those gray areas for Emeritus,  
26 right?

27 MR. REID: That's vague, "this".

28 Q (By MS. CLEMENT) Medications --

1 THE COURT: Hold on.

2 MS. CLEMENT: Excuse me.

3 MR. REID: Um, by using the word "this" it makes the  
4 question vague, your Honor.

5 THE COURT: I thought you were going to object to what  
6 a gray area was. This seems pretty much like a standard  
7 English article.

8 MR. REID: Well, she is referring back. It's a vague  
9 question, your Honor.

10 THE COURT: Could you be more specific?

11 MS. CLEMENT: Yes.

12 Q (By MS. CLEMENT) Medication administration in  
13 Emeritus and the regulations that say that you can only  
14 assist with medications is one of those gray areas for  
15 Emeritus in the regulations?

16 MR. REID: That's vague.

17 THE COURT: He can answer it if he can answer.

18 THE WITNESS: Probably need a little bit more  
19 specificity.

20 MS. CLEMENT: Yeah.

21 Q (By MS. CLEMENT) Do you remember in your deposition  
22 going on at great length about how Emeritus cannot  
23 administer medications, they can only assist with  
24 medications?

25 A I remember that discussion, yes.

26 Q Yes. And you remember talking with me in your  
27 deposition about how, um, they can only assist with insulin  
28 injections, they can't actually give insulin injections

1 unless it's a licensed nurse?

2 A Yes.

3 Q But you know, in fact, that Emeritus does administer  
4 medications in its facilities, including Emerald Hills?

5 A They assist in medication management.

6 Q Well, Emeritus gives medications in their facilities  
7 to residents who have dementia?

8 A That's true.

9 Q Residents who have dementia who are ordered  
10 resident -- who are ordered their medications PRN which  
11 means as needed?

12 A Yes.

13 Q That means the resident has to be able to tell you if  
14 they want the medication or not?

15 A That is correct.

16 Q But, still, you're administering or assisting the  
17 dementia residents with those PRN medications?

18 A Yes, because some of them are still able to express.

19 Q Mrs. Boice wasn't one of those people, was she?

20 MR. REID: Lacks foundation.

21 THE COURT: He can answer, if he can.

22 THE WITNESS: At that time I don't remember if she can  
23 or she cannot.

24 Q (By MS. CLEMENT) You read her record?

25 A Yes.

26 Q You've read it again to prepare for your testimony,  
27 correct?

28 A I didn't.

1 Q Oh. Now, med techs get a total of 16 hours of  
2 training, right?

3 A Yes.

4 Q And isn't it true that Emeritus passes every single  
5 person who takes the med tech training in California?

6 MR. REID: It's overbroad and lacks foundation.

7 THE COURT: If he knows.

8 THE WITNESS: I'm -- I'm sorry. You said passes?

9 Q (By MS. CLEMENT) Yeah. They all pass. You give them  
10 a two-day training and every single one of them passes?

11 A Okay. Yes, yes.

12 Q Right. In fact, Emeritus fills out the certificate  
13 before the class even starts; true?

14 A Yes.

15 Q Nobody flunks the med tech training?

16 A I don't know that.

17 Q So your buildings like at Emerald Hills can go months  
18 at a time without a nurse; true?

19 MR. REID: That is asked and answered, your Honor.

20 THE COURT: Sustained.

21 Q (By MS. CLEMENT) You know that Emerald Hills went  
22 months at a time without a nurse?

23 A Yes.

24 Q And instead of a nurse then you put someone in there  
25 who was a med tech that you called a wellness coordinator,  
26 correct?

27 A I think so, yes.

28 Q And you did that in a lot of your buildings in

1 California, correct?

2 A Yes.

3 Q And so you expect actually that there will be a nurse  
4 in all of the buildings because you expect the nurses to  
5 look at the resident's medication administration record to  
6 make sure the orders are accurate?

7 A Yes.

8 Q And you expect the nurses to look at those medication  
9 administration records almost every day to make sure the  
10 medications are given as ordered?

11 A That's true.

12 Q How do you expect that to happen when there is no  
13 nurse there?

14 A Well, it could be done by the executive director or a  
15 manager. Um, the way it's set up is you have what you call  
16 the medication administration record, or MAR and basically  
17 you'll be able to scan through the pages and see whether  
18 medications are being given. It -- it -- it wouldn't take a  
19 licensed nurse to be -- to be able to do that. It's no  
20 different when you're -- when a daughter or a son is  
21 assisting their loved ones at home in medication. That's --  
22 that's the kind of set-up that we have in our community.

23 Q Except for in your communities families are paying a  
24 lot of money to have a nurse oversee their parent's care,  
25 correct?

26 MR. REID: Objection, that is argumentative, calls for  
27 speculation, overbroad.

28 THE COURT: Overruled.

1           THE WITNESS: I don't know if I would quantify it a  
2 lot -- lots of money, but definitely they are paying for  
3 those services.

4           Q       (By MS. CLEMENT) Now, executive director, if she is  
5 not a licensed nurse she can't perform what you said in your  
6 testimony that a nurse needed to perform in terms of nursing  
7 duties, correct?

8           A       Yes.

9           Q       And med techs aren't allowed to interpret or assess  
10 drug interactions?

11          A       Yes.

12          Q       And they are not allowed to act as a licensed nurse  
13 and do an assessment of a resident?

14          A       Yes.

15          Q       And on those MARs, those medication administration  
16 records, when there is holes in those records where there is  
17 a medication that is supposed to be given, every time you  
18 have a medication be given that -- someone is supposed to  
19 initial that they gave the medication, correct?

20          A       Yes.

21          Q       And when they don't initial -- if the medication  
22 hasn't been given, they have to write on the back side of  
23 the medication administration the reason why it wasn't  
24 given?

25          A       Yes.

26          Q       And if it's a PRN or as-needed medication like for  
27 pain, you have to write on the back why you gave it and what  
28 the result was?



1 A That is correct.

2 Q And you learned as a nurse, um, in nursing school not  
3 documented means not done?

4 A Not all of the time.

5 Q That's not what you learned in nursing school, sir?

6 A It depends on the instructor.

7 Q Isn't it true, Mr. Amparo, that you testified that in  
8 nursing school you learned especially with medication that  
9 if it's not documented, it means it's not done?

10 A Yes.

11 Q Mr. Amparo, isn't it true that when there has been  
12 days when a resident doesn't get their medication in one of  
13 your facilities that the physician is supposed to be  
14 notified?

15 A Yes.

16 Q And the family is supposed to be notified when the  
17 resident doesn't get their medication?

18 A Yes.

19 Q And there should be something written up by the  
20 nursing staff that there hasn't been medication given to a  
21 resident?

22 A Yes.

23 Q And I'm going to move to a different topic now and  
24 that topic is with regard to non-compliance conferences,  
25 okay?

26 A Okay.

27 Q You've attended non-compliance conferences with the  
28 Department of Social Services regarding Emeritus facilities,

1 correct?

2 A Correct.

3 MR. REID: Objection, irrelevant.

4 THE COURT: Overruled.

5 THE WITNESS: Yes.

6 Q (By MS. CLEMENT) And tell -- a non-compliance  
7 conference, that is when the State has determined after  
8 investigation that a facility is not in compliance within  
9 the regulations?

10 A Yes.

11 Q In your experience the State only puts a facility into  
12 non-compliance status when there is serious at jeopardy for  
13 the residents's safety issues, correct?

14 A I don't -- not necessarily.

15 Q That's been your experience at Emeritus though,  
16 correct?

17 A Not all of the time.

18 Q Can you think of any time in California where Emeritus  
19 has been put on non-compliance status when it wasn't for a  
20 matter relating to safety of the residents?

21 A On top of my head I'm not able to recall, but what I  
22 remember when -- in -- in those instances wherein I was able  
23 to attend or be -- was given the opportunity to participate,  
24 um, the Department of Social Services, um, have different,  
25 um, ways in determining whether a community is -- is  
26 non-compliant or not.

27 In terms of if it's always related to safety, um, I  
28 think I would defer to licensing because they are the ones

1     that is making that decision. It would be very difficult  
2     for me, um, to interpret their -- their decision as to why  
3     their -- they had placed a community on a non-compliance  
4     plan.

5     Q       Okay. So one of your quality metrics that you told us  
6     that you measure is skin breakdown or bed sores, correct?

7     A       That is one of them, yes.

8     Q       And those are also called pressure ulcers, correct?

9     A       Yes.

10    Q       And that is a serious issue for a elder, correct?

11    A       Yes.

12    Q       Those can lead to death, right?

13    A       Possibly, yes.

14    Q       You know that as a nurse; true?

15    A       True.

16    Q       And you've attended non-compliance conferences for  
17    Emeritus facilities in California where that, in fact, was  
18    the issue?

19           MR. REID: Objection, relevance --

20           THE COURT: Overruled.

21           MR. REID: -- vague.

22           THE COURT: Overruled. Overruled.

23           THE WITNESS: Yes.

24    Q       (By MS. CLEMENT) You've attended non-compliance  
25    conferences in California where residents were developing  
26    serious deep tissue pressure ulcers in your facilities,  
27    correct?

28    A       Yes.

1 Q You've actually had a facility in California in a  
2 non-compliance conference that you attended that went into a  
3 two year non-compliance plan with the State as a result of  
4 residents developing serious stage 4 full thickness pressure  
5 ulcers?

6 A That's not how I understand why they placed the  
7 community on a compliance plan.

8 Q That was the issue at Chatsworth, wasn't it?

9 A No, it wasn't.

10 Q Can you turn to Exhibit Number 161?

11 THE COURT: Can I get 161, please?

12 (Joint Exhibit 161 was marked for identification.)

13 Q (By MS. CLEMENT) Isn't it true that at Chatsworth,  
14 the Emeritus facility where you attended this non-compliance  
15 conference in May of 2009, the subject matter was a resident  
16 who in April of 2008 had developed stage 4 -- which you can  
17 let us know, Mr. Amparo, that's the highest stage of a  
18 pressure ulcer, full thickness, can involve bone, muscle?

19 A Yes.

20 Q Stage 4 pressure ulcers to both of her heels?

21 A Yes.

22 Q And she also was severely dehydrated?

23 MR. REID: I will object, your Honor, I don't think  
24 this is relevant.

25 MS. CLEMENT: Goes to notice, your Honor.

26 THE COURT: The issue about dehydration being  
27 relevant?

28 MR. REID: Well, this entire matter post-dates any --

1           THE COURT: We talked about this in motions in limine.  
2 If your objection is just to the whole topic of the bed  
3 sores or pressure source post-date, the objection is  
4 overruled.

5 Q       (By MS. CLEMENT) Do you need the question?

6 A       Yes, please.

7 Q       The State also found the resident was severely  
8 dehydrated?

9 A       Yes.

10 Q       And that the resident developed these stage 4 pressure  
11 ulcers while under the care of Emeritus?

12 A       Yes.

13 Q       And under the next paragraph on a July 3rd, 2008,  
14 visit on an allegation of neglect the resident was admitted  
15 to the hospital with approximately five or more stage 2 to 4  
16 pressure ulcers all over her body that she developed at the  
17 facility?

18 A       Yes.

19 Q       And there were other issues about -- let's see, one,  
20 two, three, four -- five other facilities that were  
21 discussed at that non-compliance conference, correct?

22           MR. REID: Objection, relevance.

23           THE COURT: The vague reference to "other issues" is  
24 not appropriate; sustained.

25           MS. CLEMENT: Okay.

26 Q       (By MS. CLEMENT) There were five other facilities  
27 where resident care issues were raised at that  
28 non-compliance conference that you attended?

1 MR. REID: That's vague and irrelevant.

2 THE COURT: Sustained. Unless it's related to the  
3 issues that we have been talking about in the case --  
4 Ms. Clement --

5 MS. CLEMENT: Yes.

6 THE COURT: -- it's beyond the scope.

7 MS. CLEMENT: Understood.

8 Q (By MS. CLEMENT) All of the issues raised at the  
9 non-compliance conference related to staffing, correct?

10 A Not all of them.

11 Q Well, isn't it true that all of these issues that were  
12 related at the non-compliance conference was with regard to  
13 issues that the care facilities -- the Emeritus care  
14 facilities were not providing the care that the residents  
15 needed?

16 A That's not how I understood it when I attended a  
17 meeting and also based on this document.

18 Q As a result of the Chatsworth non-compliance status  
19 that was put into effect for two years Emeritus was required  
20 to develop new policies as indicated on the third page of  
21 the non-compliance, correct?

22 A Yes.

23 Q And that -- those policies were skin check procedures  
24 for all level of care residents in their facilities,  
25 correct?

26 A Yes. That's one of them.

27 Q And now I would like to turn to Exhibit Number 150.  
28 And in the supplemental response to the question that was

1 asked that Emeritus produce all documents regarding any  
2 changes in policies or practices made as a result of the  
3 placement of Emeritus at Chatsworth on non-compliance  
4 status, Emeritus stated, they were unable to produce any  
5 documents in that none have ever existed; is that right,  
6 Mr. Amparo?

7 (Joint Exhibit 150 was marked for identification.)

8 A Yes.

9 Q So the State told you to make new policies but you  
10 didn't do it, correct?

11 A Oh, no. We -- we did create a policies. We revised  
12 our existing policies and enhanced it.

13 Q But in this sworn response by Ms. McKinnon it was  
14 stated that there were no documents to produce because there  
15 were no policies that ever existed in response to that  
16 request. Are you saying now that there were?

17 A Yeah, because if you're going to look at page 2 of  
18 that document from licensing there were five items, um, that  
19 was pointed -- that was pointed out. There was something  
20 about elopement and the two other things that you brought  
21 about. There was something about, um, private care giving.  
22 And as far as I remember, we have existing policies and  
23 procedures for some of the items that were listed on that  
24 document.

25 Q Okay. Now, in, um, February of 2010 Lisa Hulse --

26 THE COURT: You know what, I think we are at our break  
27 time.

28 MS. CLEMENT: I'm sorry.

1 THE COURT: And I would like to talk to Counsel  
2 anyway.

3 MS. CLEMENT: We can wrap up in like two questions,  
4 your Honor.

5 THE COURT: And then you're done with the witness?

6 MS. CLEMENT: Yes, I am.

7 THE COURT: Okay.

8 Q (By MS. CLEMENT) In February of 2010 Emeritus went on  
9 to non-compliance in the Hazel Creek facility too, correct?

10 A Yes.

11 Q And that was up here in Orangevale?

12 A I think so.

13 Q Yeah. And in February of 2010 Emeritus was called  
14 down to southern California with the meeting by the  
15 Department of Social Services over concerns it had that  
16 Emeritus was going to be acquiring yet another chain when  
17 there were all of these problems with non-compliance going  
18 on with Emeritus in California?

19 MR. REID: Objection, that is vague and overbroad, and  
20 irrelevant.

21 THE COURT: Ladies and gentlemen, I'll see you after  
22 the break at 3:20. Leave your notebooks on the chairs.  
23 Remember the admonitions.

24 (The following proceedings were held outside the presence of  
25 the jury:)

26 THE COURT: Ms. Clement, it would be my intention to  
27 sustain the objection based on the way the --

28 MS. CLEMENT: The question that was asked.



1 THE COURT: -- question was asked.

2 So we will be back at 3:20, and we will see where we  
3 go from there.

4 MS. CLEMENT: Sorry. You know, that happens when  
5 you're trying to -- I blubbed the question. Sorry, your  
6 Honor.

7 THE COURT: All right. We are in recess, but if  
8 Counsel could approach, please.

9 MS. CLEMENT: Yes.

10 (Sidebar conference was held.)

11 (Whereupon the court reporters switched.)

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1           **(The following proceedings were then had in open**  
2 **court, in the presence of the jury.)**

3           THE COURT ATTENDANT: All rise.

4           Department 45 of the Superior Court of California in  
5 and for the County of Sacramento is again in session.

6           Please be seated and come to order.

7           THE COURT: Okay.

8           MS. CLEMENT: Thank you, your Honor.

9           At this time, plaintiffs would seek to move in  
10 Exhibit 60.

11          MR. REID: I have no objection, your Honor.

12          THE COURT: All right. Sixty is admitted.

13           **(Joint Exhibit Number 60 was received into**  
14 **evidence.)**

15          MS. CLEMENT: Exhibit 150.

16          MR. REID: No objection.

17          MS. CLEMENT: And Exhibit 111, for purposes of  
18 notice.

19          THE COURT: All right. Hold on one second.

20          MS. CLEMENT: I apologize.

21          THE COURT: 150 is admitted.

22           **(Joint Exhibit Number 150 was received into**  
23 **evidence.)**

24          MR. REID: I have no objection.

25          THE COURT: To 111?

26          MR. REID: Correct.

27          THE COURT: All right. For purposes of notice?

28          MR. REID: Actually, I think it's probably

1 admissible for all purposes.

2 MS. CLEMENT: Okay. Great.

3 THE COURT: All right. 111 is admitted.

4 **(Joint Exhibit Number 111 was received into**  
5 **evidence.)**

6 THE COURT: Okay.

7 MS. CLEMENT: Thank you, your Honor. I apologize.

8 MR. REID: And just to clarify, 60 and 150 are being  
9 admitted -- the portions that were read in court are being  
10 admitted.

11 THE COURT: I don't know. Because it was offered --  
12 the entire exhibit was offered. And that's what you did  
13 not object to. So if you have some specific portions  
14 you're talking about, we will do that outside the presence  
15 of the jury on a break.

16 MR. REID: Counsel and I discussed it and agreed to  
17 it. We can take care of that for the Court.

18 THE COURT: Okay. Right now, I have them completely  
19 admitted. So if that's going to change, you let me know.

20 MR. REID: We will. Thank you, your Honor.

21 THE COURT: Thank you.

22 Go ahead.

23 MS. CLEMENT: Thank you, your Honor.

24 Q. (By MS. CLEMENT) Mr. Amparo, on February 24th,  
25 2010, you attended a meeting that was called by the  
26 Department of Social Services in Southern California?

27 A. Yes.

28 Q. And at that meeting were Melanie Werdel, the

1 Executive Vice President of Administration?

2 A. Yes.

3 Q. And Ana De La Cerda, the Director of Policy and  
4 Compliance?

5 A. Yes.

6 Q. And yourself?

7 A. Yes.

8 Q. And the Vice President of Operations, Susan Rotella?

9 A. Yes.

10 Q. The many members of the regional team in Southern  
11 California?

12 A. Yes.

13 Q. Including also facility level employees' executive  
14 directors?

15 A. Yes.

16 Q. As well as Lisa Hulse, your Vice President of  
17 Quality Services for California?

18 A. Yes.

19 Q. And that meeting was called by the Department of  
20 Social Services and directed that they wanted senior team  
21 from Seattle to come and participate in the meeting?

22 A. Yes.

23 Q. And prior to that meeting, there was a meeting with  
24 the Emeritus group that we've just mentioned, all of the  
25 executives from Seattle, the divisional executives,  
26 Miss Hulse and Miss Rotella, the regional team members, and  
27 the executive directors?

28 A. Yes.

1 Q. And at that meeting there was a discussion, an open  
2 forum, where the executive directors could express concerns  
3 that they had about their facilities, correct?

4 A. I think so. Yes.

5 Q. And you attended that meeting?

6 A. Yes.

7 Q. And at that meeting the concerns that were addressed  
8 by the executive directors included that they had serious  
9 concerns about how to staff their facilities?

10 A. I don't know the exact wordings around the time.

11 Q. Do you remember that serious concerns about staffing  
12 were raised at -- by the participants in that meeting?

13 A. I don't remember.

14 Q. Do you remember that there was concerns raised by  
15 people as far up the chain of command as the Vice President  
16 of Operations, Miss Rotella; that they didn't know how to  
17 staff the facility with the budgetary restraints that  
18 Emeritus had put on them?

19 A. No, I don't remember.

20 Q. Do you remember that it was specifically asked of  
21 you how they were expected to staff their facilities?

22 A. No, not that I remember.

23 Q. Do you remember that it was specifically asked of  
24 you, Mr. Amparo, as the head nurse for the company, as to  
25 how they were supposed to staff the facilities without any  
26 ratios, that Emeritus had in place no ratios, no minimum  
27 ratios for staffing?

28 A. I couldn't remember.

1 Q. Isn't it true, Mr. Amparo, that you stood up at that  
2 meeting and you told the participants that Emeritus does  
3 not have staffing ratios because if they do and they don't  
4 meet them, and there's a negative outcome and someone gets  
5 hurt, Emeritus could get in trouble?

6 A. I don't remember that.

7 Q. Isn't that what you've told other executives at  
8 Emeritus?

9 A. No.

10 Q. Isn't it true that you've told that Ana De La Cerda?

11 A. Not that I remember.

12 Q. Isn't it true that following that meeting with  
13 the executive directors, the regional directors, the  
14 vice presidents and the senior executives from corporate  
15 that you went into the meeting with the head of the  
16 Department of Social Services for Southern California and  
17 many of their licensed program analysts and managers that  
18 oversaw Emeritus facilities in Southern California?

19 A. Yes.

20 Q. And when you went into that meeting, you knew from  
21 the meeting that you'd just come from that the Emeritus  
22 employees had expressed that they had serious concerns  
23 about staffing?

24 A. I said I couldn't remember.

25 Q. Well, I'm asking you now, when you go into the next  
26 meeting the same day.

27 A. Yes.

28 Q. Do you remember -- I will withdraw the question.

1           Do you remember in the first meeting with everyone  
2           from Emeritus there that they -- the Emeritus facility  
3           level, the regional level, divisional level all told you  
4           and the other participants that there was concerns about  
5           training, that they had -- they had staff that weren't  
6           trained?

7           A.       As I sit here today, I couldn't recall.

8           Q.       So when you went into the meeting with Myron Taylor,  
9           the head of Southern California for the Department of  
10          Social Services, did anyone bring up to Mr. Taylor, and the  
11          other Department of Social Services, complaints that had  
12          been raised in the first meeting about serious concerns  
13          with regard to staffing and training in Emeritus  
14          facilities?

15          A.       I couldn't recall.

16          Q.       And isn't it true that during that meeting with  
17          Mr. Taylor and the Emeritus team and the rest of the  
18          Department of Social Services people that were present that  
19          the Department of Social Services expressed concerns about  
20          Emeritus acquiring yet another chain?

21          A.       I don't know if it's a concern, but they did ask --  
22          ask about the possible acquisition.

23          Q.       And didn't that -- I'm sorry.

24                  Did you say it wasn't a concern but they raised  
25          something about the acquisition?

26          A.       No. What I remember is they were inquiring about  
27          the possible acquisition at that time.

28          Q.       And at that time, at that meeting, there was also

1 discussion about multiple Emeritus facilities that were  
2 either in or going into noncompliance status with the  
3 Department of Social Services?

4 A. I think so, yeah.

5 Q. And you don't remember that Mr. Taylor from  
6 Department of Social Services expressed concern that  
7 Emeritus was acquiring yet more buildings to care for more  
8 people when it had already facilities in noncompliance  
9 status?

10 A. Again, I couldn't remember the exact words by  
11 Mr. Myron Taylor. What I really could remember, again, is  
12 they were inquiring about the potential acquisition at the  
13 time.

14 Q. Okay.

15 MS. CLEMENT: Your Honor, at this time we have about  
16 one minute and 40 seconds of video clips that we need to  
17 show. And these have been approved.

18 THE COURT: Have you -- do you know which ones they  
19 are?

20 MS. CLEMENT: Oh, I'm sorry. I was supposed to do  
21 that.

22 MR. REID: I know they're ones that we've discussed.

23 MS. CLEMENT: Do you want me to --

24 THE COURT: For the record, tell me what they are,  
25 please.

26 MS. CLEMENT: Yes. Absolutely. Sorry, Judge.

27 592:25 to 593:5. 592:19 to 24.

28 360:23, 360:3 (verbatim). 278:19, 279:8.



1 Thank you.

2 THE COURT: No objection?

3 MR. REID: No, your Honor.

4 THE COURT: All right.

5 **(The following video excerpt was then played in open**  
6 **court):**

7 Q. Would you agree that accepting residents with higher  
8 levels of care -- would you agree that accepting residents  
9 with higher levels of care or acuity requires more training  
10 of the staff?

11 A. Yes.

12 Q. Does Emeritus provide any training whatsoever to its  
13 directors on how to staff the facility when residents with  
14 increased acuity are accepted into the facility?

15 A. I'm not sure.

16 Q. And in order for a facility to function properly,  
17 you need to have directors who are actually being  
18 supervised, correct?

19 A. Yes.

20 Q. Is it your understanding that Emeritus never needs  
21 to accept a particular resident for care? So, in other  
22 words, there's no requirement that Emeritus has to accept  
23 someone who wants to come to their facility, correct?

24 A. Yes.

25 Q. And -- however, if Emeritus does choose to accept a  
26 resident into their care, they are responsible for meeting  
27 that resident's needs?

28 A. Yes.

1 Q. And those needs need to be identified in the  
2 preadmission appraisal?

3 A. Yes.

4 **(Video stopped.)**

5 MS. CLEMENT: That's it, your Honor.

6 Thank you. I have no further questions.

7 THE COURT: All right. Mr. Reid.

8 MR. REID: Thank you, your Honor.

9 Good afternoon, ladies and gentlemen.

10 REDIRECT EXAMINATION

11 BY BRYAN R. REID, Attorney at Law, Counsel on behalf of the  
12 Defendant EMERITUS CORPORATION dba EMERITUS AT EMERALD  
13 HILLS:

14 Q. Mr. Amparo, I have some questions I want to ask you,  
15 but I do want to follow up on a few things first, if that's  
16 all right. I want to talk first about the -- this  
17 Chatsworth noncompliance circumstance.

18 You indicated that you have a certain understanding  
19 of what that was -- all entailed, correct?

20 A. Correct.

21 Q. Would you tell the jury. This was the May 11th,  
22 2009 Chatsworth noncompliance. What was that about?

23 A. Sure. I was invited or was given the opportunity to  
24 meet with the head of licensing responsible for those  
25 communities that were mentioned here. The main concern of  
26 Kit Chan, who is the supervisor for that area, was the  
27 involvement of private caregivers from what we call third  
28 party. Because in our communities, residents and families

1 have the right to bring in private caregivers, whether it's  
2 somebody that they know or they're affiliated with, or  
3 sometimes they would also bring Home Health staff, or  
4 therapy.

5 MS. CLEMENT: Your Honor, I'd object to the  
6 question. It's exceeding the scope of the question. And,  
7 also, hearsay as to the state of mind of Miss Chan. It's  
8 speculative.

9 THE COURT: Well, he's going beyond the scope of the  
10 question. So let's go question by question on this.

11 MR. REID: All right.

12 THE COURT: The objection is sustained.

13 MR. REID: Okay.

14 Q. (By MR. REID) And we heard that there was a  
15 citation and noncompliance related to this resident who had  
16 developed some wounds, correct?

17 A. Correct.

18 Q. And can you tell the jury the circumstances of how  
19 that resident developed wounds in the Chatsworth facility?

20 MS. CLEMENT: It lacks foundation, your Honor.  
21 Calls for speculation.

22 THE COURT: Sustained.

23 Q. (By MR. REID) Are you familiar with the -- the  
24 circumstances surrounding the citation that was issued  
25 concerning the resident with the wounds at the Chatsworth  
26 facility?

27 A. Yes.

28 Q. And did you have a discussion with the Department of

1 Social Services during that meeting about those  
2 circumstances?

3 A. Yes, I did.

4 Q. And what were the circumstances in how that resident  
5 developed wounds?

6 MS. CLEMENT: It still lacks foundation as to how he  
7 would know.

8 THE COURT: The question is personal knowledge or  
9 not.

10 Counsel, can you lay the foundation for that,  
11 please.

12 MR. REID: Sure.

13 Q. (By MR. REID) What personal knowledge do you have  
14 concerning the circumstances surrounding the wound that was  
15 developed by the resident at Chatsworth?

16 A. My understanding was that --

17 Q. What is your understanding based on?

18 A. My -- based on the conversation that took place  
19 during that time.

20 Q. Okay. Did you also review records concerning --

21 MS. CLEMENT: Leading.

22 THE COURT: Sustained.

23 Q. (By MR. REID) Did you also -- what did you do to  
24 familiarize yourself with the circumstance of that  
25 resident's care before going into the meeting?

26 MS. CLEMENT: Lacks foundation.

27 THE COURT: He can answer.

28 THE WITNESS: Before I went into that meeting, I

1 really didn't know the exact agenda. So I came there to  
2 answer whatever concerns they presented to me, along with  
3 other members that were with me at the time.

4 Q. (By MR. REID) Okay. So what did Kit Chan relate to  
5 you as the concern about the resident who had developed the  
6 wounds at Chatsworth?

7 MS. CLEMENT: Hearsay.

8 THE COURT: Any objection -- any exception?

9 MR. REID: Yes. It's his state of mind, your Honor.  
10 It's --

11 THE COURT: Whose state of mind?

12 MR. REID: Mr. Amparo, what he was told about the  
13 circumstances of the wound.

14 THE COURT: His state of mind is not an issue in the  
15 case.

16 What I'd like to know is are you opening the door to  
17 a complete discussion of this Chatsworth incident?

18 MS. CLEMENT: Yeah. Bring it on.

19 MR. REID: What I'm trying to do, your Honor, is --  
20 well, I'll withdraw the question.

21 Q. (By MR. REID) Could you pull up -- could you pull  
22 Exhibit 152.

23 THE COURT: Can I get 152, please.

24 Oh, wait. I've got it. I've got 152. Let me give  
25 you this to put back.

26 **(Joint Exhibit Number 152 was marked for**  
27 **identification.)**

28 Q. (By MR. REID) Do you have that in front of you?

1 A. Yes.

2 Q. Do you recognize that as a citation issued by the  
3 California Department of Social Services concerning a  
4 resident of the Chatsworth community?

5 A. Yes.

6 Q. And that is a citation issued with regard to a  
7 resident who was admitted to the hospital with five or more  
8 Stage II to Stage IV decubitus ulcers all over her body?

9 A. Yes.

10 Q. Is that the resident that was the subject of the  
11 noncompliance conference in -- that we've been discussing?

12 A. I'm not sure.

13 Q. Okay. If you could take a moment to review to  
14 yourself the investigative findings. And let me know if  
15 this -- if that refreshes your memory about this being the  
16 resident who was the subject of the noncompliance  
17 conference.

18 (Pause.)

19 THE WITNESS: Yes.

20 Q. (By MR. REID) Okay. It does refresh your memory?

21 A. Yes.

22 Q. And it is the resident that was the subject of the  
23 noncompliance conference?

24 A. Yes.

25 Q. All right. And what did the Department of Social  
26 Services indicate was the basis of the citation for which  
27 the noncompliance conference occurred?

28 MS. CLEMENT: Well, I'll object, your Honor. It

1 lacks foundation. This is not the noncompliance  
2 conference.

3 THE COURT: He can answer.

4 THE WITNESS: They were concerned about the  
5 allegation of neglect and lack -- lack of supervision.

6 Q. (By MR. REID) Okay. And what were the  
7 circumstances of the supervision that was occurring,  
8 according to the Department of Social Services as they --  
9 in their investigation?

10 A. Again, in our setting, we -- we do allow private  
11 caregiving if family desires. So licensing would like for  
12 us to make sure that we also work with people who are  
13 brought in as third parties. So their big concern was  
14 again --

15 MS. CLEMENT: Objection, your Honor. It exceeds the  
16 scope of the question.

17 THE COURT: Sustained.

18 Q. (By MR. REID) Did the Department of Social Services  
19 in the citation require -- or find a deficiency in the  
20 manner in which the Emeritus staff worked with the private  
21 duty caregiver in taking care of the resident?

22 A. I'm sorry. Could you repeat the question.

23 Q. Yes.

24 This resident had a private duty caregiver, correct?

25 A. Yes.

26 Q. And the private duty caregiver was the person who  
27 was providing the care to this resident, correct?

28 A. That is correct.

1 Q. And the basis of the citation was that the  
2 Department of Social Services determined that the Emeritus  
3 staff --

4 MS. CLEMENT: Leading, your Honor.

5 THE COURT: Sustained.

6 Q. (By MR. REID) As a result -- what was -- what were  
7 you -- you were asked on direct examination what the --  
8 what Emeritus was asked to do in response to this citation.

9 Do you recall that?

10 A. Yes.

11 Q. What was -- what did you do in response to the  
12 citation?

13 MS. CLEMENT: Lacks foundation.

14 THE COURT: Sustained.

15 Q. (By MR. REID) Do you know what Emeritus did in  
16 response to this citation and the noncompliance conference?  
17 Do you have personal knowledge of that?

18 A. Yes.

19 Q. Okay. And what was done?

20 A. We discussed what systems that we have in place to  
21 increase our supervision of third-party staff.

22 Q. And did Emeritus implement new policies about  
23 allowing third-party outside caregivers to provide care?

24 A. Yes.

25 Q. What was the change in policy?

26 A. We decided to work and communicate with our family  
27 members and residents and basically encourage them if it's  
28 possible that instead of having third-party private



1 caregivers, if they would consider using our own staff.

2 But we still made it a point to make sure that they do  
3 understand that that's their right, but we encourage them.

4 Q. Now, in that noncompliance conference, did the State  
5 of California issue any citations for any of the facilities  
6 in question as a result of a finding of understaffing?

7 MS. CLEMENT: It lacks foundation.

8 THE COURT: Sustained.

9 Q. (By MR. REID) Are you aware of -- we know that  
10 there were several issues involved in the noncompliance  
11 conference, correct? In several facilities, correct?

12 A. Yes.

13 Q. None of those involved an issue of understaffing,  
14 did they?

15 MS. CLEMENT: It lacks foundation.

16 THE COURT: Sustained.

17 Q. (By MR. REID) Do you have -- do you have personal  
18 knowledge of what the citations were issued for?

19 MS. CLEMENT: It lacks foundation, your Honor. He's  
20 not the citing party.

21 THE COURT: He can answer the question.

22 THE WITNESS: I need to see the actual document.

23 MR. REID: Okay. That was a document --

24 161. Would you pull that up.

25 **(Joint Exhibit Number 161 was marked for**  
26 **identification.)**

27 THE WITNESS: Yes, I have it in front of me.

28 THE COURT: I'm sorry.

1 MR. REID: Exhibit 161.

2 THE COURT: What was just flashed up there?

3 MR. REID: No, I don't want --

4 MS. FORD: I'm sorry.

5 MR. REID: I wasn't -- I didn't intend to put it up.  
6 I apologize.

7 THE COURT: Okay. Can you get the binder. 161.

8 (Pause.)

9 Q. (By MR. REID) Okay. Do you have that in front of  
10 you, Mr. Amparo?

11 A. Yes.

12 Q. And that is the noncompliance conference that you  
13 attended in May of 2009 --

14 A. Yes.

15 Q. -- a summary of that meeting?

16 And that's the meeting you attended with numerous  
17 other people, correct?

18 A. Yes.

19 Q. And there were multiple citations with different  
20 facilities discussed at that time, correct?

21 A. I refer them to deficiencies. (Verbatim.) Sorry.

22 Q. Deficiencies.

23 And were any of the deficiencies discussed  
24 involving --

25 THE COURT REPORTER: I can't hear you, Counsel.

26 Q. (By MR. REID) Were any of the deficiencies issued  
27 as a result of allegations of inadequate staffing?

28 A. No.

1 MS. CLEMENT: Lacks foundation.

2 THE COURT: Could counsel approach, please.

3 (Whereupon an unreported bench conference was then  
4 had in open court between the Court and counsel.)

5 Q. (By MR. REID) Let's go in a different direction.  
6 Let's talk a little bit about how you find yourself here  
7 today.

8 Can you tell the jury a little bit about your  
9 background, please.

10 A. Sure. As mentioned earlier, I graduated from the  
11 Philippines, and I got my bachelor's degree in nursing in  
12 the Philippines. And I came here around 1987. In between  
13 those time, while waiting to sit for the Boards of Nursing,  
14 I took different jobs. I worked in an electronic company  
15 here in Santa Clara, California. And I also worked for  
16 McDonalds for a period of time. And then after that, I was  
17 able to get into the -- what we call long-term care  
18 setting, primarily for -- for -- for the elderly.

19 So if you are going to recall what was mentioned,  
20 I've -- I've done all kinds -- or different kinds of  
21 positions in a long --

22 Q. Let's talk about that.

23 So after you came to California, what was your first  
24 job as a healthcare provider?

25 A. I was a medical records director.

26 Q. In what kind of a facility?

27 A. It was a long-term care psych facility in San Jose.

28 Q. All right. And is that a position that requires a

1 nursing degree?

2 A. Not necessarily.

3 Q. Was there ever a time that you held a position as a  
4 CNA?

5 A. In between, I did registry work as a CNA. Yes.

6 Q. A CNA is a certified nurses aid, correct?

7 A. Certified Nursing Assistant.

8 Q. Assistant.

9 And what's the process for one to become a nurse in  
10 California, when you get your education in the Philippines?

11 A. The process at that time is for the board -- the  
12 Board of Nursing to review the credentials, or my  
13 transcript, to make sure that the requirements that I  
14 fulfilled in another country is sufficient or equivalent as  
15 to what they're (verbatim) required here in the United  
16 States.

17 And after submission of all the necessary  
18 requirements, the Board would allow foreign graduates like  
19 me to take the examination and, hopefully, earn the full  
20 licensure as being a nurse.

21 Q. Okay. And you have obtained your licensure as a  
22 registered nurse in California?

23 A. Both registered nurse and licensed vocational nurse.  
24 So I first had the licensed vocational nurse and then took  
25 the RN exam as well.

26 Q. Okay. And I do want to ask, is English your first  
27 language?

28 A. No.

1 Q. And when did it become your primary language, if  
2 ever?

3 A. When I came here to the United States. Although,  
4 the medium of instruction at the school I went to was in  
5 English.

6 Q. You have worked as a nurse in an acute care  
7 hospital, I understand.

8 A. In the Philippines, yes.

9 Q. Okay. How about in California? Have you worked in  
10 an acute setting in California?

11 A. I'm trying to remember, and it's not reflected in my  
12 CV. I remember there was a very short period of time that  
13 I worked in an acute setting in Gilroy. And, again, that  
14 was a psych acute hospital. But it was a very short -- a  
15 very short period of time.

16 Q. Okay. What was -- what was your first job in  
17 long-term care?

18 A. My first job is a floor nurse. "Charge nurse" we  
19 call it.

20 Q. Charge nurse?

21 A. Yes.

22 Q. And where was that?

23 A. That was at -- again, at that same psych facility  
24 that I mentioned in San Jose.

25 Q. And what is a -- so an LVN is a licensed vocational  
26 nurse?

27 A. That is correct.

28 Q. And what's the role of a charge nurse in a skilled

1 nursing setting?

2 A. It's basically the same. Charge nurses in a skilled  
3 nursing facility or nursing home facility is responsible  
4 overseeing the care that's being rendered to our residents,  
5 sometimes they're called patients. And they're also  
6 responsible for making sure that resident needs are met.

7 (Verbatim.)

8 Q. And what would be -- how long did you -- when was it  
9 that you were the charge nurse at the psych hospital? When  
10 was that?

11 A. Psych hospital?

12 Q. The psych skilled nursing facility. I'm sorry.

13 A. Oh, okay. What year you mean?

14 Q. Right.

15 A. I'm trying to recall here.

16 Probably around 1990 or '91. Somewhere around  
17 there.

18 Q. Okay. And then when did you first find yourself --  
19 your way into assisted living?

20 A. That was around the time that I was a regional nurse  
21 for another company. That company primarily was  
22 responsible for skilled nursing facilities, but they have a  
23 few assisted living communities that were assigned to me at  
24 some point.

25 Q. Okay. And when was that?

26 A. Probably in 2005 maybe.

27 Q. All right.

28 A. Somewhere around there.

1 Q. What company was that?

2 A. It was -- they went through different name changes.  
3 Once they were called Mariner Health Care. Now they're  
4 called Sava Senior -- Sava Health Care, I believe. At one  
5 point it was called Paragon. But that's that company.

6 Q. Okay. When did you first become employed by  
7 Summerville?

8 A. Well, I celebrated my tenth year this year. So ten  
9 years from -- from July 1st.

10 Q. Okay. What was your -- what was your position at  
11 Summerville?

12 A. I was the Vice President of Quality Services.

13 Q. What -- it looks like you've settled into assisted  
14 living as your career.

15 What draws you to that particular vocation?

16 A. At first, I was skeptical. I didn't really know  
17 what to expect. I wasn't sure what it is about.  
18 Initially, when I visited the -- these assisted living  
19 properties, I was expecting it to be exactly like a nursing  
20 home. But after, I would say, getting my feet wet and  
21 getting to know the industry a little bit better, I found a  
22 huge difference between the two. In an assisted living  
23 setting, the way I've described it to people --

24 MS. CLEMENT: Objection, your Honor. He's exceeding  
25 the scope of the question.

26 THE COURT: I'm sorry. I can't hear you.

27 MS. CLEMENT: Exceeds the scope of the question.

28 THE COURT: No. He's responding. He can answer.

1           THE WITNESS: In assisted living, again, the way I  
2 describe it to people in layman's terms, the best that I  
3 could, is it's almost like a hotel. In a hotel, you pay  
4 for the room. Basically that's it. That's why we call  
5 them apartment -- we call them apartments, though in  
6 assisted living.

7           The difference here is you also have what we call  
8 ancillary services that could be provided. And that would  
9 entail supervision and assistance with activities of daily  
10 living. And that would entail helping residents with their  
11 bathing, grooming, toileting, nutrition, all that. But the  
12 setup is very different. It's -- it's -- it's very homey.  
13 You know, like in a dining room, it's -- the way it's set  
14 up is family dining style. So that's -- that's the big  
15 difference.

16           And I also like the fact that our seniors are really  
17 able to -- a normal life as possible. And I'm saying that  
18 because they're allowed to make decisions from (sic)  
19 themselves and we advocate for them.

20 Q.       Earlier today you were asked a lot of questions  
21 about a resident who needs this or a resident who needs  
22 that. Is there -- are any two residents the same?

23 A.       No.

24 Q.       And is it a fair portrayal of assisted living that  
25 we have nothing but frail elderly living in our buildings?

26 A.       I disagree with that.

27 Q.       Describe if you can, is there a typical resident of  
28 assisted living?



1 A. Yes.

2 Q. Well, tell us what assisted living residents are  
3 like.

4 A. Primarily, they are people who are elders. A lot of  
5 times these are people who would live at home alone. And  
6 children, like myself, would be concerned of leaving them  
7 alone independently at their house because of safety. So  
8 an alternate -- an alternative for family members like us  
9 is to consider placing those type of individuals in our  
10 community for some sort of an oversight.

11 So the typical resident that you would see in our  
12 setting would be residents who are able to come and go. If  
13 they wanted to go to the grocery, they wanted to do some  
14 banking, they wanted to go wherever, they go. We would  
15 provide what we call escorting services. We have vans that  
16 will -- private vans that we utilize to allow them to get  
17 out of the community. And, also, family members are free  
18 to come and go, bring them in, take them out to whatever.  
19 Very similar, again, in a hotel setting where you're free  
20 to just come and go.

21 Q. Okay. Now, there's been some -- some notion that  
22 when people live in the memory care section of a community  
23 they need more care, always need more care. And you didn't  
24 agree with that statement. Can you explain why.

25 A. It varies. It's not always the case that they're  
26 going to need care. As -- the example I have given you is,  
27 again, a typical senior who is living alone at home and the  
28 concern is some sort of an oversight. So those type of

1 residents would be moving into us and those residents  
2 sometimes what we call independent residents. (Verbatim.)  
3 Because they are -- they are in our setting but they don't  
4 require all these other ancillary services that I've  
5 mentioned, but they needed that kind of environment, where  
6 there are people who are able to see them, and they're able  
7 to commingle with other people.

8 Now, as they age in place, you know, as you grow  
9 older --

10 MS. CLEMENT: Your Honor, exceeding the scope. It's  
11 a narrative.

12 THE COURT: We are getting into a little bit of a  
13 narrative. Can we break this down, please.

14 MR. REID: Sure.

15 Q. (By MR. REID) Why wouldn't it be correct to say  
16 that when somebody moves from an assisted living side --  
17 somebody living in a memory care side always needs more  
18 care than somebody on the assisted living side?

19 A. Because that's not always the case.

20 Q. And why is that?

21 A. Because not all the residents that's transitioned  
22 from assisted living portion of the building who goes to  
23 memory care do not always require extensive assistance.  
24 Because there's different stages involving Alzheimer's and  
25 dementia. And a lot of times when you're in the early  
26 stages -- (Verbatim.)

27 MS. CLEMENT: It lacks foundation, your Honor.

28 THE COURT: Sustained.

1 Q. (By MR. REID) Earlier today you were being asked --  
2 you mentioned that one of the priorities and obligations in  
3 providing assisted living is encouraging independence of  
4 the residents.

5 Did I get that right?

6 A. Yes.

7 Q. Can you explain that to the jury.

8 MS. CLEMENT: It's calling for a narrative, your  
9 Honor.

10 THE COURT: He can answer.

11 The question is: What does "encouraging  
12 independence" mean?

13 THE WITNESS: We would like our residents to do as  
14 much as they can for themselves.

15 Q. (By MR. REID) And is that important for -- for your  
16 population?

17 MS. CLEMENT: It lacks foundation.

18 THE COURT: Overruled.

19 THE WITNESS: It's very important.

20 Q. (By MR. REID) Why is that?

21 A. Again, as I've said, we would like our residents to  
22 live a normal life. So it's our responsibility to  
23 encourage them to -- to do it as part of maintenance and  
24 exercise, so the resident would also feel that they're  
25 still able to do what they can for themselves.

26 Q. In talking about your role now in this operation,  
27 we've heard many times that you're the Vice President of  
28 Quality Services. Tell the jury what you do. What's your

1 job?

2 A. My job is primarily to provide our communities  
3 support by working directly with people who I interact  
4 with, primarily divisional nurses, such as Lisa Hulse, and  
5 other nurses that are responsible for their respective  
6 divisions. I partner with operations, I partner with  
7 sales, I partner with human resources to develop programs  
8 and identify anything that could enhance the care that's  
9 being rendered to our residents.

10 Q. Okay. And we've seen this hierarchy and this  
11 structure.

12 How many people -- how many people report to you?

13 A. Are you talking about today? Because it changed --

14 Q. Well --

15 A. -- over time.

16 Q. -- let's talk about 2008.

17 How many people reported to you?

18 A. More or less, ten. Ten, eleven.

19 Q. Okay. And in terms of your interaction with those  
20 people, are those -- are the people that report to you, are  
21 they the Vice President of Quality Services?

22 A. Most of them are.

23 Q. And then you have some office staff, too?

24 A. I have office staff, yes.

25 Q. All right. And what kind of things are you  
26 communicating with your Vice President of Quality Services  
27 about?

28 MS. CLEMENT: Its vague, your Honor.

1 THE COURT: He can answer.

2 THE WITNESS: Basically any type of communication  
3 that I will be discussing with them would be surrounding a  
4 resident in resident care services.

5 Q. (By MR. REID) Okay. Are you involved in developing  
6 policies for the operations?

7 A. When you say "operations," what do you mean?

8 Q. The care operations in the communities.

9 A. Yes, absolutely.

10 Q. What's that process? How are -- how are the  
11 policies and procedures developed?

12 A. We look at best practices. Because of the size of  
13 our company, we are -- we have the ability to identify best  
14 practices. So once you've identified those best practices,  
15 we convert them to policies and procedures. And we also  
16 make reference to State -- you know, State regulations as  
17 well.

18 Q. Okay. Now, we've heard that in California there is  
19 no requirement for a nurse to work in an assisted living  
20 community, correct?

21 A. That is correct.

22 Q. All right.

23 MS. CLEMENT: Leading, your Honor.

24 THE COURT: It's preliminary. I'll allow it. But  
25 please be careful.

26 MR. REID: Yes, your Honor.

27 Q. (By MR. REID) A little while ago, Miss Clement was  
28 asking you about delivery -- things like delivering

1 medications to residents in assisted living communities.

2 That can be done by non-nursing personnel, correct?

3 MS. CLEMENT: It lacks foundation. And the term  
4 "delivery" is -- renders the question vague.

5 THE COURT: He can answer.

6 THE WITNESS: Kindly repeat the question, please.

7 Q. (By MR. REID) Yes.

8 It is appropriate -- it is okay in California for a  
9 non-nurse to give medications to a resident in an assisted  
10 living community, correct?

11 A. Yes.

12 Q. Including narcotic medications, correct?

13 A. Yes.

14 Q. You have assisted living competitors that operate  
15 and provide the same services that you provide that don't  
16 employ nurses, correct?

17 A. Yes.

18 MS. CLEMENT: It's leading, your Honor.

19 THE COURT: Sustained.

20 MS. CLEMENT: Move to strike.

21 THE COURT: Granted.

22 Q. (By MR. REID) So when you testified that you want  
23 to have a nurse delivering a medication in an Emeritus  
24 community, what is that based on?

25 A. That's based on the premise of having what I call  
26 added service. Because when you have a nurse at the  
27 community, that would allow the community to have someone  
28 who is a liaison between physicians, other healthcare

1 providers, family members, staff, and residents.

2 Q. Okay. And the nurse, the resident care director in  
3 the Emeritus communities, is she actually providing nursing  
4 services?

5 A. Not necessarily.

6 Q. How would you describe the kind of services that  
7 your nurses are providing in assisted living?

8 A. It's -- it's different in a way -- and I'm sorry. I  
9 have to make this comparison. In a nursing home setting  
10 where you're required to have nurses, nurses are obliged to  
11 conduct what I call nursing or medical assessments in  
12 partnership with a physician. They're also allowed to  
13 render what we call skilled nursing services, wherein  
14 you're required to have nurses 24 hours a day.

15 In an assisted living setting, while it is true that  
16 we have a nurse, the nurse -- or nurses are not allowed to  
17 do those typical services, like skilled services, that's  
18 rendered in a nursing home setting because assisted living  
19 properties are not considered a healthcare provider.

20 Q. Now, we were talking about you had -- you were the  
21 Vice President of Quality Services at Summerville, correct?

22 A. Yes.

23 Q. And you held that position when Summerville and  
24 Emeritus merged, correct?

25 A. That is correct.

26 Q. Okay. And have you ever been told by anyone that  
27 the corporate culture for this new Emeritus is to grow?

28 MS. CLEMENT: Leading, your Honor.

1 THE COURT: No. It's a question.

2 He can answer.

3 THE WITNESS: No.

4 Q. (By MR. REID) Have you ever been told that the  
5 corporate culture for Emeritus is to put heads in the beds?

6 A. Absolutely not.

7 Q. What is the corporate culture of Emeritus?

8 A. Corporate culture of Emeritus is to provide care  
9 that's necessary to meet the needs of our residents, and  
10 that could be done in many ways.

11 Q. When you say that can be done in many ways, what  
12 does that mean?

13 A. That means sharing programs that we've developed as  
14 a company to benefit our residents as they age in place.  
15 We also have programs, what we call safety -- "Safely  
16 Somewhere," where the whole focus is to ensure safety of  
17 our residents regardless if they're within our property or  
18 prior to them moving to a different level of care. And,  
19 also, working with -- with our staff at all levels, in  
20 partnership with them to, again, implement those programs  
21 and work with their families and their loved ones and the  
22 residents on a daily basis.

23 Q. You mentioned the concept of "age in place."

24 What is that?

25 A. Aging in place is basically allowing someone who --  
26 who's going through different stages as they age to be as  
27 independent as possible by encouraging them to do as much  
28 as they can for themselves, keep their dignity intact,



1 and realizing that as you grow older you need to allow  
2 residents to still make decisions, granting that they know  
3 the consequences of those decisions.

4 Q. Now, sometimes we know residents of assisted living  
5 in California develop conditions that require care beyond  
6 what assisted living providers are allowed to provide,  
7 true?

8 A. Yes.

9 Q. Okay. And are there options available to families  
10 so that they -- they or their loved one can stay in an  
11 assisted living setting even when their needs exceed what  
12 the company can provide?

13 A. Yes.

14 Q. What's that process?

15 A. Again, I will tie it back to what I've said earlier  
16 about third-party providers. So there would be  
17 instances -- let's say a resident -- let's say who had a  
18 stroke and went to the hospital. And then the hospital  
19 would discharge them back to our communities. And  
20 sometimes they would be needing some sort of therapy,  
21 whether it be physical therapy, whether it be occupational  
22 therapy. Then we are allowed to discuss this option with  
23 family members, so family members could decide what therapy  
24 providers they could bring in to meet that need.

25 Same with hospice services. And I'm not sure if you  
26 guys are familiar. Hospice services is something that's --

27 MS. CLEMENT: Objection, your Honor. It's a  
28 narrative.

1 THE COURT: I'm sorry?

2 MS. CLEMENT: It's a narrative.

3 THE COURT: No. He's answering -- he's answering  
4 the question.

5 Go ahead.

6 THE WITNESS: And as I'm saying, hospice services  
7 refers to end-of-life services provided to residents. And  
8 in hospice, there would be nurses. There would be a  
9 chaplain. There would be all these other resources that  
10 they could bring into our setting, so that these residents  
11 are allowed to live in our setting which is considered  
12 their home.

13 Q. (By MR. REID) Why not -- why wouldn't the resident  
14 just get sent to a nursing home or a hospital to -- if  
15 their condition exceeds the needs of the facility?

16 A. There is a process for that.

17 Q. What is the process?

18 A. The process for that is -- again, if -- if it comes  
19 to a point that the care required by a resident would  
20 warrant what I call 24 hours skilled nursing services, as  
21 I've mentioned earlier, then those are instances wherein  
22 you will have to move those residents into higher level of  
23 care. Or changes in condition that would warrant an  
24 evaluation or assessment at the acute hospital, we have to  
25 move them out.

26 Now, there would be cases where even if -- if their  
27 needs is exceeding what we're allowed to provide in our  
28 setting, but hospice has been prescribed or authorized by

1 the physician, and family members granting or responsible  
2 party agrees to having hospice services, then we would be  
3 allowed to keep those type of residents in our setting.

4 Q. Well -- and you want to keep those residents in your  
5 setting so you can make more money, right?

6 A. Absolutely not.

7 Q. Well, then why would you want to keep -- why would  
8 you work with them so they could stay in the assisted  
9 living setting?

10 A. This is considered their home. We have residents  
11 who have been with us for 15, 20 years. And as they age in  
12 place --

13 (Pause.)

14 THE WITNESS: Sorry.

15 It's not their fault. But we have to be that person  
16 to advocate for them.

17 I'm sorry.

18 THE COURT: It's okay. There's some tissues there.

19 MR. REID: It's been a long day.

20 THE COURT: Would this be a good time to break, you  
21 think, until tomorrow?

22 MR. REID: I think it would be, your Honor.

23 THE WITNESS: No. I just remember my parents,  
24 because they're in their eighties. So I live and breathe  
25 that -- that experience. Sorry. I'm sorry everybody.

26 THE COURT: It's okay. It's okay.

27 I actually think this is a good time to take a  
28 break.

1           So, ladies and gentlemen, leave your notebooks on  
2 your chairs, remember the admonitions. I'll see you at  
3 9:00 o'clock tomorrow morning.

4           Please wait for the jury to leave.

5           (Pause.)

6           **(The following proceedings were then had in open**  
7 **court, outside the presence of the jury.)**

8           THE COURT: All right. Is there anything we need to  
9 talk about?

10          MR. REID: I don't -- I don't believe so, your  
11 Honor. No.

12          THE COURT: Okay.

13          MS. CLEMENT: Your Honor? I did have some concerns  
14 that Mr. Reid's questioning was --

15          THE COURT: You can all be seated back there.

16          MS. CLEMENT: I did have concerns that Mr. Reid's  
17 questioning was pushing into the boundaries of the motion  
18 in limine that the Court granted with regard to not  
19 allowing me to question Mr. Amparo on how many times it  
20 took him to pass the boards. With the way they asked those  
21 questions and the way he answered them, I think that the  
22 Court should reconsider and allow me to ask those questions  
23 of Mr. Amparo.

24          THE COURT: The motion in limine had to do with the  
25 immigration status?

26          MS. CLEMENT: No, not at all.

27          THE COURT: Which one?

28          MS. CLEMENT: That was the witness with the green

1 card question.

2 This was regarding Mr. Amparo. And they brought a  
3 motion in limine to preclude me from asking him how many  
4 times he took the boards. He couldn't remember how many  
5 times he took the boards to become an RN. And today when  
6 he was proclaiming all of his qualifications he stated,  
7 *While waiting to sit for the boards, I did this and this.*  
8 *And then I worked as a CNA, and then I took the LVN and the*  
9 *RN boards.* And that's not true. And I think we should be  
10 allowed now to question him on that.

11 MR. REID: It's all true. And he's entitled to say  
12 he's an RN. I didn't say -- I didn't say anything about  
13 how many times he took the boards. I just -- he just  
14 testified that he's an RN. And actually I said, *You are*  
15 *now an RN.* I didn't even say when it happened.

16 MS. CLEMENT: It was the way the witness answered  
17 the questions, too, your Honor.

18 THE COURT: Okay. I didn't -- I personally did not  
19 see any red flags about the way he answered the questions.  
20 So I'm not inclined to reopen my decision on that for the  
21 very explicit reasons that I stated in my written ruling on  
22 the subject.

23 I would suggest that great bedtime reading before  
24 you fall asleep at night is to reread my decisions on the  
25 motions in limine. Because we -- I will not repeat again  
26 that if we start tripping into some of those rulings,  
27 whoever opens the door, if they've made the motion, has  
28 opened the door.

1           So with that, I'll see you all tomorrow morning at  
2 9:00 o'clock.

3           MS. CLEMENT: Thank you, your Honor.

4           (Evening recess.)

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1 WEDNESDAY, JANUARY 9, 2013

2 MORNING SESSION

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4 The matter of JOAN BOICE, by and through her  
5 Successor-in-Interest, ERIC BOICE, and ERIC BOICE, NANCEE  
6 BOICE, and MARK BOICE, individually, Plaintiffs, versus  
7 EMERITUS CORPORATION dba EMERITUS AT EMERALD HILLS,  
8 Defendant, Case Number 34-2009-00063714, came on regularly  
9 this day before Honorable JUDY HOLZER HERSHER, Judge of the  
10 Superior Court of California, for the County of Sacramento,  
11 Department 45.

12 The Plaintiffs, JOAN BOICE, by and through her  
13 Successor-in-Interest, ERIC BOICE, and ERIC BOICE, NANCEE  
14 BOICE and MARK BOICE, were represented by LESLIE A.  
15 CLEMENT, Attorney at Law; VALERIE DAWSON, Attorney at Law  
16 (not present); ASHLEY BAIRD, Attorney at Law; and SEAN  
17 LAIRD, Attorney at Law.

18 The Plaintiffs, ERIC BOICE and MARK BOICE were  
19 present.

20 The Defendant, EMERITUS CORPORATION dba EMERITUS AT  
21 EMERALD HILLS, was represented by BRYAN R. REID, Attorney  
22 at Law; RIMA BADAWIYA, Attorney at Law; and KIM M. WELLS,  
23 Attorney at Law.

24 Also present on behalf of the Defendant, EMERITUS  
25 CORPORATION dba EMERITUS AT EMERALD HILLS, was JANET E.  
26 McKINNON, Vice President of Legal Affairs; LISA HULSE, Vice  
27 President Quality & Risk Management; and HOLLY A. FORD,  
28 Trial Consultant.

1           **(The following proceedings were then had in open**  
2           **court, in the presence of the jury.)**

3           THE COURT ATTENDANT: All rise.

4           Department 45 of the Sacramento Superior Court is  
5           now in session. The Honorable Judge Judy Hersher  
6           presiding.

7           You may be seated.

8           THE COURT: Okay. I believe we had a witness on the  
9           stand yesterday, Mr. Amparo.

10          Could we bring him in, please.

11          (Pause.)

12          THE COURT: You can be seated.

13          THE WITNESS: Thank you.

14          THE COURT: And, sir, I remind you, you remain under  
15          oath.

16          THE WITNESS: Yes. Thank you.

17          MR. REID: Thank you, your Honor.

18          Good morning, ladies and gentlemen.

19                               TESTIMONY OF

20          BUDGIE AMPARO, a witness called pursuant to 776 of the  
21          Evidence Code by the Plaintiffs:

22                               REDIRECT EXAMINATION

23          BY BRYAN R. REID, Attorney at Law, Counsel on behalf of the  
24          Defendant:

25          Q.       Good morning, Mr. Amparo.

26          A.       Good morning.

27          Q.       Yesterday -- or in this trial we've seen a couple of  
28          video clips where you have identified yourself as "the



1 pillar of quality" for the Emeritus company.

2 Could you explain to the jury what you mean by that.

3 A. Yeah. Pillar of quality services, the whole essence  
4 of what I do centers around our residents. And my primary  
5 responsibility is to provide continuous enhancement and  
6 improvement of our services that would impact resident  
7 services. And I do that in many ways.

8 I'm responsible to lead our group in developing  
9 policies and procedures so that our staff would have a  
10 reference and guide on how to render those services. I  
11 monitor events at the home office and, in partnership, I  
12 look at trends as well with our Vice President of Quality  
13 Services. I communicate concerns that is necessary to  
14 enhance the care of our services. I also make it a point  
15 to advocate for our residents and our staff as well.

16 I also make it a point to make sure that we learn  
17 from day-to-day events that's taking place in our  
18 properties. I think that's the beauty of having so many  
19 properties, because that allows you to have a lot more of  
20 experiences and learnings from it.

21 I always make it a point to let everyone know in our  
22 company that I have equal footing with operations and sales  
23 and marketing, considering we have the collaborative team  
24 management.

25 And first and foremost, again, I also make it a  
26 point to -- to be a cheerleader to our staff that -- when  
27 they do a good job. Being a nurse, and I've been doing  
28 this for over 20 years, I really know the challenges and

1 the difficulties that a staff member encounter on a  
2 day-to-day basis, so I make it a point to celebrate little  
3 successes and triumphs that they've accomplished. But I'm  
4 also that same person to educate them and -- through my  
5 divisional Vice President of Quality Services -- educate  
6 them on things that would probably offer us an opportunity  
7 to do continuous improvement.

8 Q. Thank you.

9 And yesterday when we were talking about your  
10 education and your qualifications, I failed to ask you  
11 about any continuing education that you have after  
12 obtaining your undergraduate degree.

13 Do you have an advanced degree?

14 A. Yes. I took a masters of nursing, and I was able to  
15 accomplish that in the year 2006. I think I could have  
16 done it a lot sooner, but I think I waited for a long  
17 period of time because -- what I experienced is it was a  
18 lot easier to appreciate everything that comes with -- with  
19 that masters degree after I've done it myself.

20 Q. And in 2006, you were already Vice President of  
21 Quality Services, I think, for Summerville. You were way  
22 up the chain of command, right?

23 A. Yes.

24 Q. So how were you able to do your masters training?

25 A. It wasn't easy. It takes a lot of discipline. I  
26 have to be very structured with my schedule. After work, I  
27 would -- after work in the evenings, I will have to do all  
28 the requirements that's necessary. I literally didn't have

1 any weekends because those are the times that I -- I may  
2 use. But I was -- I was determined to finish it. Because  
3 I know at the end of that course whatever learnings I had  
4 is something that I could impart to people I interact with  
5 on a daily basis, not only on a professional basis but  
6 colleagues also in the industry.

7 Q. Okay. And what school did you get your degree from?

8 A. It was an on line degree with University of Phoenix.

9 Q. And briefly, how does that work? How does someone  
10 get a degree on-line?

11 A. Well, initially, I was skeptical about it. I was  
12 like saying, *What would I be learning doing it on-line?*  
13 But I -- I made a mistake. You are really forced to really  
14 understand your materials. Because in a typical classroom  
15 setting -- you know, we were all once a student -- it's  
16 like -- it's a hit-and-miss. Would you be fortunate enough  
17 if your instructor don't call you to answer questions? And  
18 if you get lucky, then you don't have to worry about it.  
19 But an on-line course, you have specific assignments. You  
20 really have to do it. You have to submit it. So it was a  
21 very rewarding but very, very difficult process.

22 Q. Probably a lot of us have had that experience of  
23 trying to be invisible to the professor, right, and not get  
24 called on?

25 A. Right. Virtual learning.

26 Q. Okay. Now, yesterday you were shown a document that  
27 you brought to your deposition, and it was part of a --  
28 what we call -- what's called a CPR.

1           And could you briefly remind the jury what a CPR is.

2       A.       Yes. A CPR -- the acronym stands for "Comprehensive  
3       Process Review." And that process is a process that we've  
4       utilized to serve as an auditing tool and also an  
5       educational tool. It is compromised of different  
6       departments, of quality services, operations, dietary,  
7       housekeeping, pharmacy, all of those other departments.

8           So, it's done once a year. And we have a  
9       representation from different levels. Sometimes -- the  
10      regional nurse or the regional quality of services is the  
11      facilitator of that process, and he or she would assemble a  
12      team together. It could be sister communities, executive  
13      directors from a sister community, property manager, or a  
14      resident care director, pharmacy services. So it's a  
15      representation from different disciplines.

16           So you basically go into a building and just take a  
17      snapshot. So you do random sampling. For the most part,  
18      they would be reviewing probably about five resident  
19      records. And we're very strict with that -- with that  
20      system.

21           So let's say you pulled five charts, and the five  
22      charts looks like they're all in place and it's perfect.  
23      We normally encourage the team members to pull more charts  
24      because probably they pulled the right charts. But we're  
25      also very strict in making that determination of like full  
26      compliance, partial compliance, and noncompliance.

27           So let's say you pulled one chart out of the five  
28      and one of the chart has a missing information. So

1 automatically that would fall into the partial compliance.  
2 So whether the building is about 100 units or above, the  
3 minute that we see one chart to be out of compliance, then  
4 you go in partial compliance.

5 Q. And -- now, that form that we saw was -- it had the  
6 Summerville logo on it.

7 Why -- Summerville didn't exist in the end of 2007,  
8 did it?

9 A. No. That template or that process is something that  
10 I developed when I was with Summerville. And there was a  
11 merger that took place in 2007 between Emeritus and  
12 Summerville. So it took us a while to integrate a lot of  
13 the -- a lot of the services, a lot of the protocols, a lot  
14 of the policies. So we decided to at least make use of an  
15 existing tool with -- that's present with Summerville and  
16 roll it out right away. Because at the end of the day,  
17 regardless whether it's a Summerville logo on top of it,  
18 the whole essence of that process is to really do audits  
19 and use it as an educational tool.

20 Q. Okay. And when Summerville -- pardon me -- when  
21 Summerville and Emeritus merged, you were part of the  
22 senior management team that participated in that merger; is  
23 that correct?

24 A. That is correct.

25 Q. Okay. Did you play a role in the decision-making of  
26 bringing these two companies together?

27 A. I was part of it on the Summerville side, yes.

28 Q. Okay. And was -- from -- was it your understanding

1 that these companies were coming together in an effort to  
2 become the largest long-term care provider in the country?

3 MS. CLEMENT: It lacks foundation.

4 THE COURT: Overruled.

5 THE WITNESS: Absolutely not.

6 Q. (By MR. REID) What was the -- from your perspective  
7 and understanding, what was the purpose of bringing these  
8 companies together?

9 A. There were a lot of talks going on prior to the  
10 merger and what we discovered is that a lot of the systems  
11 that were present with Emeritus and several systems with  
12 Summerville were going to complement each other's company.  
13 And I was one of those individuals who was able to really  
14 see that. Because when we were in the process of  
15 integrating the policies and procedures for both companies,  
16 we had some that were better than theirs and they had some  
17 that were -- that were better than ours. So come to think  
18 of it, if you have two corporations that complements one  
19 another and you're able to maximize the benefits of  
20 developing best practices, at the end of the day, every  
21 single person that we would -- that we would touch, whether  
22 it's a resident, or a family member, or a staff member,  
23 would benefit from it because it's -- it's bringing  
24 together two corporations to develop best practices.

25 Q. Well, let me -- let me ask you about that.

26 Do -- as a senior executive of Summerville and now a  
27 senior executive of this merged company, do you -- what --  
28 do you think that that offers -- that size of that

1 organization offers benefits to the individual residents?

2 MS. CLEMENT: Leading.

3 THE COURT: Sustained.

4 Q. (By MR. REID) Do you have a -- do you have an  
5 opinion personally, based on your experience as an  
6 executive leader, as to whether the size of the company is  
7 a benefit for the consumers or a detriment for the  
8 consumers or something else?

9 MS. CLEMENT: Leading.

10 THE COURT: Overruled.

11 He can answer.

12 THE WITNESS: The size of the company when we merged  
13 definitely benefited many people. And I'm saying that  
14 based on several factors.

15 Q. (By MR. REID) Well, what are the benefits of the  
16 size of the company?

17 A. The size of the company allowed us to, again,  
18 develop a lot of best practices. That also allowed us to  
19 have some more capital in doing improvements, ongoing  
20 improvements in our communities, whether it be in physical  
21 plan or providing more services to our residents. It also  
22 allowed us to offer better benefits to our employees. So  
23 there -- and there's a lot of resources. That's one of the  
24 other things. Because when you have bigger -- when you are  
25 in a bigger company, your communities would be exposed to a  
26 lot of resources involving different disciplines, whether  
27 it be clinical, whether it be operation, whether it would  
28 be dietary, or human resources. It's the beauty of being

1 that big.

2 Q. Well, what does that mean, that the communities have  
3 access to these resources? How does that work?

4 A. So each -- each discipline, whether it's sales and  
5 marketing, operations, human resources, they develop their  
6 own respective policies and procedures and standards. They  
7 have experts. They have dieticians sometimes. They have  
8 people with masters degree in different areas of the field.  
9 And I think if you're going to be able to make use of those  
10 resources that would allow your communities to perform  
11 better and, hopefully, those performance is going to impact  
12 both the residents and our staff as well.

13 Q. Well let's talk about your division, the Quality  
14 Services Division.

15 What kind of resources are you allowed to -- or do  
16 you provide to a community like Emerald Hills given your  
17 size and resources?

18 A. Can I ask a question?

19 Q. Sure. Well --

20 MS. CLEMENT: It lacks foundation.

21 Q. (By MR. REID) You don't understand. I'll ask it a  
22 different way.

23 Considering the size of Emeritus and the size of  
24 your division, are there any benefits that are available to  
25 communities like Emerald Hills?

26 MS. CLEMENT: It lacks foundation.

27 THE COURT: Is this a generic question, or are you  
28 asking about the specific facility at Emerald Hills?



1           MR. REID: I was asking a generic question, using  
2 Emerald Hills as an example.

3           THE COURT: Okay. He can answer on that basis.

4           THE WITNESS: Could you kindly repeat the question.  
5 I'm sorry.

6 Q.       (By MR. REID) I was afraid you were going to ask me  
7 that.

8           We've been talking about the size of this company  
9 and your perspective that that offers benefits to the  
10 residents and the communities. And I want to focus on  
11 quality services now.

12          What benefits do the communities, like  
13 Emerald Hills, have access to in the quality services field  
14 given the size of your company?

15 A.       Okay. One of the benefits that Emerald Hills  
16 received based on the size of the company is our ability,  
17 again, to -- first, pharmacy services. We have a national  
18 contract with one of the biggest pharmacy providers in the  
19 country that we were able to offer them. Because there  
20 were -- there were --

21          MS. CLEMENT: Objection, your Honor. It's a  
22 narrative. It's vague as to time.

23          THE COURT: You can follow up on this.

24          MS. CLEMENT: Okay.

25          THE COURT: Go ahead.

26          MS. CLEMENT: Thank you.

27          THE WITNESS: So pharmacy services is one. Again,  
28 we have nurses, regional nurses that are clustered.

1 Because our markets -- our market in California is  
2 clustered. So that also allowed the community to make use  
3 of nursing resources from different regions. That also  
4 allowed the community to get benefits, benefits in terms of  
5 resources involving dietary, property management,  
6 operations, and sales and marketing, and a whole array of  
7 other services.

8 Q. (By MR. REID) Okay. You mentioned a little while  
9 ago that one of your roles is to -- first, to have merged  
10 policies and procedures of these two companies and, also,  
11 to develop policies and procedures.

12 Do I have that right?

13 A. Yes.

14 Q. Can you tell the jury how policies and procedures  
15 related to care, quality services, are developed and  
16 implemented at Emeritus.

17 THE COURT: Okay. Can we get a time frame now. I  
18 think that's important.

19 MR. REID: Sure.

20 Q. (By MR. REID) Let's focus on the time frame of  
21 2008. And that's a -- how were the policies that were in  
22 place at that time -- where did those come from? How were  
23 they developed?

24 A. Around 2008, that was like a year after the merger  
25 between Emeritus and Summerville. So you basically have  
26 two sets of policies and procedures. We've allowed the  
27 regional Emeritus communities to make use of their existing  
28 policies at that time. Because we would like to be

1 sensitive to our staff. We don't want to bombard them with  
2 too many changes right away. So it took us a while. It  
3 took us like over a year to basically put those policies  
4 together. The way we did it is I gathered my team  
5 involving divisional --

6 THE COURT: We're going off. It's a narrative. Not  
7 responsive. Stay on, please.

8 Q. (By MR. REID) Okay. What was the process in  
9 merging and selecting the policies that became effective  
10 and were being -- were being used in 2008?

11 A. We were using basically the policies that were in  
12 existence at that time for the Emeritus properties.

13 Q. Okay. And since that time then, what has been the  
14 process for developing new policies on a going forward  
15 basis?

16 A. Then afterwards, that's when I brought my team  
17 together, compared two policies and choosed the best  
18 policies -- and some of them would be a combination  
19 of both -- and came up with a more comprehensive and  
20 enhanced policies.

21 Q. Okay. And now, today, if a regulation changes in  
22 California and -- which triggers the need for a new policy  
23 in a California community, what's the process for  
24 developing that type of policy?

25 A. Even if policies are developed in Seattle, we allow  
26 our communities to make revisions to it because it's a  
27 community-based operations. So if they would like to make  
28 revisions to the policy that would make sense for that

1 particular community, we allow that to happen because that  
2 is our -- that is our -- our process, that is our standard.

3 Q. Okay. We've heard that Emeritus is a national  
4 provider of long-term care.

5 Who in the organization has the ability to implement  
6 a policy that can affect large portions of the business?

7 MS. CLEMENT: Objection, your Honor. It's leading.

8 THE COURT: Overruled.

9 THE WITNESS: I'm sorry. I have to ask you to  
10 kindly repeat the question.

11 THE COURT: I'll have the court reporter read it  
12 back.

13 (Record read.)

14 MS. CLEMENT: It's vague.

15 THE COURT: The question is implementation.

16 He can answer.

17 THE WITNESS: The implementation would be done by  
18 each community. And I make it a point to make sure that  
19 they are followed.

20 Q. (By MR. REID) Okay. And who has the ability to  
21 write the policy that will be implemented in the  
22 communities that would be -- affect a large portion of the  
23 business?

24 A. Myself and my team.

25 Q. Okay. And your team being?

26 A. My team would be the quality services team involving  
27 divisional Vice President of Quality Services, and two  
28 other members of my team.

1 Q. Okay. So while -- the communities themselves, since  
2 they have their own -- they have the ability to request  
3 changes to the policies? Is that what you said?

4 MS. CLEMENT: Objection. It's leading.

5 THE COURT: Overruled.

6 THE WITNESS: Yes.

7 Q. (By MR. REID) Okay. And why -- under what  
8 circumstances might a community want to do that?

9 A. Based on their physical setup, based on their  
10 resident population. It could be a variety of factors.  
11 But, again, we believe in community-based operations. So  
12 we allow them to make suggestions. And if those  
13 suggestions is something that is conforming with our  
14 standards and our regulations, we allow it.

15 Q. Okay. So then what is the process? If a community  
16 says, "This policy is okay, but we'd rather do it this way  
17 because of the specific needs of our residents," what would  
18 be the process for getting that policy adjusted?

19 A. The community would be submitting their -- their  
20 revisions so at least we have a copy of what was revised.  
21 And that's -- that's -- that's simple.

22 Q. Okay. And who reviews the requested revisions to  
23 make sure that they're appropriate and in compliance with  
24 the regulations and whatnot?

25 A. The review would be between the community -- the  
26 executive director or the resident care director, whoever  
27 is appropriate at the community, in partnership with the  
28 regional quality services, or whatever regional discipline,

1 also, at the divisional level. And then it goes to the  
2 Seattle office, to me.

3 Q. Okay. And ultimately do you and the Seattle office  
4 have the -- who -- does anyone below you have the authority  
5 to implement the policy without your approval?

6 A. No.

7 Q. Now, following up on this notion that each community  
8 is autonomous to some extent, can you explain to the jury  
9 what you mean by that.

10 A. We believe in what we call community --  
11 community-based operations. So anything that has to do  
12 with a community based on the resident population, physical  
13 setup, anything that's very specific to the community, we  
14 make it a point to consider that and allow communities to  
15 make decisions that would make sense to its local  
16 operations.

17 Q. Okay. So when it comes to the day-to-day operations  
18 of a community like Emerald Hills, who in this chain of  
19 command has the authority to hire and fire the staff?

20 A. The staff at the community. The leadership, the  
21 executive director for the most part.

22 Q. Okay. And would the resident care director play a  
23 role in that as well at the community?

24 A. If it -- if it's a staff member involving his or her  
25 staff members.

26 Q. Okay. How about training? Where does -- who in  
27 this hierarchy of the organization takes primary  
28 responsibility to implement -- make sure the staff are

1 receiving the training that they need?

2 A. Again, the leadership at the community, executive  
3 director, and the other directors at the community. And  
4 then in partnership with their regional directors.

5 Q. Okay. Well, why -- why would Emeritus want to allow  
6 this autonomy of individual communities when it has so many  
7 communities across the country?

8 A. It's our company philosophy. That's the philosophy  
9 of our chief operating -- chief executive officer and  
10 president. He always would remind us and everybody to  
11 allow our communities to function as independent as  
12 possible and our role is to provide services -- provide  
13 support, I'm sorry, provide support, and supervision when  
14 it's necessary, and oversight.

15 Q. Okay. So let's talk about the decisions to have a  
16 new resident move into the community. Okay?

17 What -- what is the practice of -- in 2008, what was  
18 the practice of Emeritus in terms of the decision-making to  
19 have someone come live at the community?

20 A. It's ultimately the responsibility of the resident  
21 care director, based on his or her assessment or  
22 evaluation, of course, in partnership with the executive  
23 director and whoever he or she feels appropriate.

24 Q. Okay. And does Emeritus provide policies and  
25 guidelines to help the resident care director make those  
26 decisions?

27 A. Yes.

28 Q. Why would it be up -- why would you allow that

1 decision-making to a person such as a resident care  
2 director in an individual community?

3 A. We -- we have to trust our staff. We have to  
4 empower our staff. I was once a director myself, and I  
5 think I need -- at the time, when I was a director, I made  
6 it a point that I've given the authority to make those  
7 judgment. (Verbatim.) So that's the same -- at least for  
8 me, that's the same principle I follow dealing with our  
9 staff at our community.

10 Q. Okay. So allow me to just kind of take a little bit  
11 of a detour here and ask you about something yesterday.

12 Several times yesterday you were asked and you  
13 testified that you never issued an order to Emerald Hills  
14 that they should stop admitting residents.

15 Do you recall that testimony?

16 A. Yes, I do.

17 Q. And why -- why didn't you issue an order like that?

18 A. Well, I think it would be very unfair for me to make  
19 that -- that decision. To me, that's dictating to a  
20 community as to what they're supposed to do and that would  
21 be contraindication to what I've said about our philosophy.

22 Had the executive director or its members called and  
23 say, "We would like to stop admissions," I wouldn't be  
24 opposed to that because that -- that -- if that's what she  
25 believes needs to happen, we need to be supportive of that.  
26 And we also have to remember, that would also not be fair  
27 for the residents -- existing other residents at the  
28 community. It wouldn't be fair for the staff. It would



1 also not be fair for potential move-ins, inquiries that  
2 might be coming into the building.

3 Q. What do you mean by that?

4 A. Well, let's say -- let's say you have a family  
5 member who's looking for a placement and they identified  
6 Emerald Hills to be the place that they wanted their loved  
7 ones, because maybe proximity-wise it's convenient for  
8 them. And then we tell them, "I'm sorry. We're not taking  
9 you in." Then that -- to me, that is a disservice to that  
10 family member and potential resident.

11 Q. Let's clear something up here.

12 Do all residents of assisted living communities like  
13 Emerald Hills require assistance with their medications?

14 A. Not all of them.

15 Q. Okay. So some residents -- some residents manage  
16 their own medications?

17 A. Yes.

18 Q. So if there was a crisis in the medication room,  
19 that wouldn't affect that need --

20 MS. CLEMENT: Objection.

21 MR. REID: -- that need of theirs, would it?

22 MS. CLEMENT: Leading.

23 THE COURT: Sustained.

24 Q. (By MR. REID) Have you ever advocated, or insisted,  
25 or demanded, or created a culture that required your  
26 communities to admit residents that they couldn't take care  
27 of?

28 A. Absolutely not.

1 Q. So if a community was thriving and everybody was  
2 happy and prospering and they had one empty room, but a  
3 resident applied for that room and wasn't appropriate --  
4 had needs that the community couldn't meet, should they  
5 still take that person?

6 A. Absolutely not.

7 Q. And if a community is having some problems with its  
8 leadership in the resident care area and having some  
9 problems with its medication room and having some staff  
10 turnover and a resident applies to move in, but the  
11 resident care director determines that notwithstanding  
12 these challenges they could still meet the needs of the  
13 resident, would you defer to the resident care director to  
14 make that decision?

15 MS. CLEMENT: Leading. Compound.

16 THE COURT: Overruled.

17 THE WITNESS: Yes.

18 Q. (By MR. REID) Also, yesterday there was a -- you  
19 were asked many questions about the quality service members  
20 and the nurses being involved in discharges. And I want --  
21 now, certainly the quality service members are involved in  
22 making sure that the current residents' needs are being  
23 met, right?

24 A. Yes.

25 Q. But why in the world would a nurse need to have  
26 information about people who are being discharged?

27 A. I think it's an opportunity -- for every single  
28 possible discharge, it gives us an opportunity to do better

1 providing care and services to that particular resident.  
2 We would like to know the reason why and see if there's  
3 something we can do. There would be a variety of reasons  
4 why they would probably want to move out.

5           Some of the reasons here might involve financials.  
6 Let's say a resident no longer has enough money to live in  
7 an apartment, a single apartment, and they wanted to  
8 move out. We wanted for our staff to be able to suggest  
9 what we call "friendship suites," wherein you'll have an  
10 apartment roommate basically to share that apartment. Or  
11 relocation. You know, the daughter or son would be moving  
12 to another part of the country. We would like to inform  
13 them -- because not everybody's aware -- that we have other  
14 properties in other states that we could also offer. So  
15 that transition is, hopefully, seamless. Because it's  
16 basically going to be similar services.

17 Q.       Okay. What about when someone says, "Look, you  
18 don't have a salad bar. And I want a salad bar, so I'm  
19 leaving"? Is that something that you would want to know as  
20 part of the quality service team?

21 A.       Sure. I mean, I cannot build a salad bar, but maybe  
22 we can have our dietary manager come up with a better idea.

23           And, again, remember what I said. Other communities  
24 probably have other better suggestions to meet that  
25 request. Then we would like to work on it.

26 Q.       Okay. Are there times that people indicate they are  
27 moving out because they have developed or their loved one  
28 has developed needs that they think can't be met in this

1 community, in the assisted living community?

2 A. Yes.

3 Q. Okay. And what -- why would you want to know about  
4 that?

5 A. First, we would like to find out what kind of  
6 discussion had taken place involving the resident, if the  
7 resident's still able to make that decision, the physician,  
8 and the family member. We wanted to get to the roots of  
9 what's causing that change or a medical issue and see what  
10 we can do to address it. But if -- if it comes to a point  
11 that, let's say, we've done everything that we can that's  
12 considered reasonable, and it comes to a point that we're  
13 no longer going to be able to keep that resident at their  
14 home, then, you know, it's their choice. If they really  
15 wanted to move, and for whatever reason, after we've  
16 already explored and offered other alternatives, it's --  
17 it's ultimately their choice.

18 Q. Are there times that in -- since you are tracking  
19 and monitoring the move-outs that you become aware of an  
20 issue in a community that you hadn't been aware of before,  
21 a quality-related issue?

22 A. It's -- it's possible.

23 Q. Okay. And do you -- when you become aware of an  
24 issue like that, someone's moving out because they have a  
25 complaint, or several people have moved out because of the  
26 same complaint, do you do something about it?

27 A. Absolutely.

28 Q. Are you familiar with the concept of "Safely

1     Somewhere"?

2     A.       Yes.

3     Q.       What is that concept?

4     A.       Safely Somewhere -- excuse me -- is a program that  
5     our company have developed. Basically making sure that  
6     whatever decision is made by the resident, whether they're  
7     staying at our property or moving somewhere, that we focus  
8     on the safety, that it would be safe for them. Because we  
9     don't consider our responsibility ending once they leave  
10    our property. We wanted to make sure if they're  
11    transitioning somewhere else that we take part in the  
12    coordination and the transition process in order for them  
13    to be safe.

14    Q.       And just to wrap up on this issue. Emeritus doesn't  
15    hold people hostage in their communities, do they?

16    A.       No.

17    Q.       People can leave?

18    A.       Yes.

19    Q.       And people do leave, don't they?

20    A.       Yes.

21    Q.       And many people stay, don't they?

22    A.       Many.

23    Q.       Now, yesterday you were asked a lot of questions  
24    about your team's role in tracking different incidents,  
25    issues.

26            Do you recall that testimony?

27    A.       Yes.

28    Q.       You were asked a lot of questions about tracking

1 media inquiries and other things like that.

2 Do you recall that?

3 A. I do.

4 Q. Okay. First of all, please tell the jury what  
5 metrics you and your team in Seattle track concerning the  
6 services that the communities are providing to the  
7 residents.

8 A. Yeah. On a daily basis -- I have individuals in  
9 Seattle who would review what we call event reports or  
10 incidents on a daily basis. So let's say somebody had  
11 fallen. Our staff would be looking -- my staff member at  
12 the Seattle home office would be looking into it and figure  
13 out what had been the cause of the fall and identify  
14 measures to -- to possibly prevent it.

15 So we -- we track falls with fractures, falls with  
16 no injuries, falls with injuries, 911's, incontinence.  
17 There's a variety of metrics that we monitor daily. We  
18 look at trends but, for the most part, it's this daily --  
19 daily events.

20 Q. Are skin integrity issues on that list?

21 A. Yes. Skin is part of it. Weight. Sorry. Weight  
22 variances is also part of it.

23 Q. Elopements?

24 A. Elopement's part of it.

25 Q. Which "elopement" means somebody leaves the building  
26 and -- when they shouldn't or they don't come back when  
27 they should?

28 A. Yes.

1 Q. And how -- how is that process supposed to work?

2 A. That process, the way it works is -- okay, so if  
3 there is an event that took place at a community, the  
4 community would be filling out what we call an event  
5 report. And that event report is sent to the Seattle  
6 office. So there would be an individual in the Seattle  
7 office who would be looking into that information and enter  
8 it into a database.

9 And at the same time, they look for, like, was there  
10 a family notification, was there a physician notification,  
11 and basically communicating any kind of concerns that they  
12 identified back to the divisional vice president of quality  
13 services and regional quality services director. Because  
14 these people are very mobile. They're like all over the  
15 place. So we wanted to --

16 MS. CLEMENT: Objection; narrative, your Honor.

17 THE COURT: I think he's answering the question, but  
18 let's follow up.

19 Q. (By MR. REID) Okay. So when one of these specific  
20 incidents occurs in the community, the community is  
21 supposed to fill out a form and fax it to you up in Seattle  
22 and to the regional team, or e-mail it? Did I get that  
23 right? Or what did I miss there? I'm sorry.

24 A. No. That time, 2008, it was faxed. Now it's  
25 automated.

26 Q. Oh, I see. Okay.

27 And once that form -- let's say a resident fell and  
28 went to the hospital. A form gets filled out. It gets

1 faxed to your team in Seattle. What happens next?

2 A. There would be a follow-up. Not for every single  
3 one of them. If my staff members have identified some  
4 follow-up that's necessary, then there would be a  
5 communication. It's called highlights. There would be a  
6 communication between the Seattle staff regional nurse  
7 that's responsible and also copied to the divisional vice  
8 president of quality services.

9 Q. Okay. And what -- I guess the question is, what are  
10 you guys looking for up there?

11 A. We're looking for potential patterns for that  
12 particular resident.

13 Q. Okay. Let me stop you with that one.

14 Patterns for a particular resident. So what does  
15 that mean?

16 A. Okay. Patterns. Let's say a resident had fallen.  
17 Is it certain time of the day that they have fallen? Is it  
18 a certain location? Is it for the same reason? Because  
19 you could have fallen five times for different reasons.  
20 But if you had fallen for the same reason, we obviously  
21 have to do something about it. And if it's frequency of  
22 falls, we always make it a point that there's a discussion  
23 with the resident and the family regarding, *Is this still*  
24 *the Safely Somewhere place for them to be?*

25 Q. Okay. Now, hopefully the community is tracking  
26 these trends as well, correct?

27 A. That's our expectation.

28 Q. Okay.



1 A. My expectation.

2 Q. But your team is up there watching this as well; is  
3 that correct?

4 A. Yes.

5 Q. Okay. So I interrupted you. You said look for  
6 trends with a particular resident.

7 What other things are your team looking for?

8 A. Is it occurring in a particular shift? Staff  
9 member. Is it the same staff member all the time? So  
10 there's a lot of -- you know, there's a lot of patterns and  
11 trends that you'll be able to see.

12 And it's also -- I really like that system  
13 because -- with the size of our company, we have almost  
14 50,000 residents. I'd like to be able -- and I have calls  
15 with family members. They would be asking me about their  
16 loved ones. And, again, I'm not going to say I know  
17 everything that's happened. But I think having that  
18 system -- I've had several family members call me asking as  
19 to what happened. I think it's good that I'm still able  
20 to -- to share what I know. I might not have everything,  
21 but that system allows me to at least share what I know,  
22 considering I'm like, you know, miles and miles away,  
23 involving almost 500 properties across the country.

24 Q. You live in Seattle, right?

25 A. Yes.

26 Q. You say that with some hesitation. You moved -- you  
27 moved your life up to Seattle to make these companies merge  
28 and work, didn't you?

1 A. Yes.

2 Q. Where did you live before that?

3 A. I lived in the San Jose area since I came here. I  
4 would just like to add, it was a very difficult move. I  
5 like California. I'm sorry.

6 (Laughter.)

7 Q. (By MR. REID) Now, with that tracking and that  
8 trending and that reporting, can an assisted living company  
9 prevent all bad outcomes?

10 A. We attempt. But it's not realistic.

11 Q. So in your -- in your title where it says "quality  
12 services," which we've talked about a lot, and "risk  
13 management," I think that's part of your title, does your  
14 risk management have some, as you see it, role to cover up  
15 incidents and hide liability?

16 A. Absolutely not. First, that would be morally and  
17 ethically against my principle. And it's not something  
18 that I would condone, neither suggest, to anybody.

19 Q. So what is your role, this risk management role?

20 A. The risk management role, it's -- it involves a  
21 variety of things. When we move in residents, there would  
22 be risks involved. That's why we do fall risk management  
23 or identifying whether they're at risk for falls. We  
24 identify if they would be at risk for developing skin  
25 issues. We -- we also identify if there's risk for  
26 elopement. So identifying all these risks.

27 So let's say we've identified that there would be  
28 risks. It is our responsibility to make sure that when we

1 make recommendations out of the risk that's been identified  
2 that the resident and/or the family member understands the  
3 risks, so should they decide that despite all the risks  
4 that is involved and they still wanted to have this type of  
5 setting for -- for them, we -- we have to respect that.

6 Q. Different subject. Thank you, Mr. Amparo.

7 A. You're welcome.

8 Q. Yesterday you were asked whether you play any role  
9 in the budgeting process. And you said you don't.

10 A. I don't.

11 Q. And can you tell the jury why that is.

12 A. I'll go back to our philosophy of like communities  
13 make their own determinations. We always make it a point  
14 that it's a community-based operation. So the budgeting  
15 process would involve local community and regional  
16 directors for the most part. And I don't get involved.  
17 It's the same -- it's the same principle that I have. I  
18 think it would be not fair for me to dictate, neither to  
19 tell them how they're supposed to do their budget when, in  
20 fact, I'm not there physically present to deal with their  
21 day-to-day operations.

22 Q. Now, has there ever been a time as the  
23 vice president of quality services that you've been asked  
24 for input about a budget?

25 A. Yes.

26 Q. And tell us about how that happens.

27 A. If -- if there's discussions about what I've seen in  
28 another divisions -- so let's say California has a

1 situation involving a community -- and for the most part,  
2 it's the nursing one. I don't get involved in the  
3 operations part. -- then what I normally would do is to  
4 look at other best practices in other divisions and make  
5 that suggestion. But, it is a suggestion. I always make  
6 it a point that I say that. What I suggest or recommend is  
7 purely a suggestion and recommendation. It needs to be the  
8 executive director and the local community who has a final  
9 say to it.

10 Q. And when you pass along that information to the  
11 executive director and the regional team, do you say -- is  
12 it -- do you make it clear that the priority is to cut the  
13 budget, keep it as low as possible, don't worry about the  
14 care?

15 MS. CLEMENT: Leading.

16 THE COURT: Sustained.

17 Q. (By MR. REID) What is the priority that you  
18 communicate to your team members about this budgeting  
19 process?

20 A. Simple. Regardless of how they do it, when they do  
21 it, whatever process they do, bottom line is to make sure  
22 that they don't compromise the care of the residents.

23 Q. Different subject.

24 Yesterday you were accused of uttering the  
25 statement, "The only legitimate move-out is death." And  
26 you denied making that statement.

27 A. I did.

28 Q. How do you know you didn't make that statement?

1 A. I would never do that. Because there's a lot of  
2 factors that would warrant a move-out. I think I've  
3 mentioned that -- first of all, that would be against my  
4 principle. It took me 20 years, over 20 years to get to  
5 where I am right now. And I wouldn't allow any corporation  
6 or anybody at our company, regardless whether it's this  
7 company or any other company, to dictate to me and have a  
8 total disregard for reasons why residents would have to  
9 move out. I just -- just couldn't even fathom that I would  
10 say such a thing.

11 Q. You're the pillar of quality in this corporate  
12 structure, right?

13 A. I am.

14 Q. And I think you said you're on equal footing with  
15 those other disciplines, operations, and sales and  
16 marketing, correct?

17 A. Yes.

18 Q. You have equal say?

19 A. Absolutely.

20 Q. And let me just ask you, those other pillars, would  
21 you ever expect them to make such a dictate as you've been  
22 accused of?

23 MS. CLEMENT: Objection, your Honor. Lacks  
24 foundation. Calls for speculation.

25 THE COURT: Speculation, sustained.

26 Q. (By MR. REID) If you heard one of your co-pillars  
27 we'll say utter that statement, would you stand for that?

28 MS. CLEMENT: Leading.

1 THE COURT: Overruled.

2 THE WITNESS: I will.

3 Q. (By MR. REID) Will you stand up to that person if  
4 they were to utter that statement?

5 A. No, I would -- what I mean by "I will" is I would  
6 stick to what I believe.

7 Q. Okay. And how about your co-pillars? What would  
8 you tell your co-pillars if they ever said that?

9 A. I would definitely challenge them.

10 Q. Have you ever had to do that?

11 A. That's our company philosophy. It's okay to  
12 challenge. That's part of the collaborative team  
13 management approach.

14 Q. Have you ever had to challenge a co-pillar for a  
15 statement that you thought they made that put the interests  
16 of the residents in jeopardy?

17 A. I'm sorry. Could you repeat the question.

18 Q. Have you ever heard one of your co-pillars make a  
19 statement that you thought showed a disregard for the needs  
20 of the residents?

21 A. No.

22 Q. So this collaborative team management approach we've  
23 talked about, is -- is that an attempt to balance the  
24 interests of the entire organization and get a strong  
25 functioning operation?

26 A. Yes.

27 Q. So based on this, the notion that you would have  
28 said, "Sales come first," is that a true statement --

1 A. No.

2 Q. -- attributed to you?

3 A. No.

4 Q. You've also been accused of uttering the statement,  
5 "Heads in beds."

6 What does that mean?

7 A. I don't know what it means. It's -- English is my  
8 second language. I don't even know if I'm able to put that  
9 together. So, I don't know. What I'm trying to say is  
10 it's not something that I would say because I don't even --  
11 I don't use those words. That's actually the first time  
12 I've heard about it.

13 Q. Now, there's certainly been an implication that with  
14 you at the head of quality services the Emeritus goal has  
15 been to minimize costs and maximize profits.

16 You recognize that?

17 A. Yes.

18 Q. And in the -- in the Quality Services Division --  
19 Department in an assisted living community, on the relative  
20 pay scales, where do the nurses fit? Are the nurses higher  
21 paid or lower paid than say the caregivers, the  
22 non-nurse-trained employees?

23 MS. CLEMENT: It lacks foundation.

24 THE COURT: He can answer.

25 THE WITNESS: Their salary is higher.

26 Q. (By MR. REID) Okay. So we've already -- we already  
27 know that assisted living communities in California, they  
28 don't have to employ nurses, right?

1 A. Right.

2 Q. And conceivably -- I know this wouldn't happen, but  
3 conceivably somebody at Emeritus could wake up tomorrow and  
4 fire every nurse in California, right?

5 MS. CLEMENT: Leading.

6 THE COURT: He can answer.

7 THE WITNESS: I hope not. But, yes.

8 Q. (By MR. REID) Okay. And if that happened, the  
9 Emeritus assisted living communities in California --

10 THE COURT: Be careful on the leading now.

11 MR. REID: Okay.

12 Q. (By MR. REID) If tomorrow no nurses were employed  
13 in any of Emeritus' assisted living communities in  
14 California, would those communities still be able to offer  
15 and provide the exact same services that they provide  
16 today?

17 (Pause.)

18 THE WITNESS: Again, first, it would be very  
19 difficult in terms of the kind of services. They still  
20 will be able to provide the kind of services, I'm just not  
21 sure about the quality.

22 Q. (By MR. REID) Okay. So the assisted living  
23 buildings could continue to operate as they are today,  
24 right?

25 A. Yes.

26 Q. But you would be concerned that that would have an  
27 impact on the quality?

28 A. Absolutely.



1 Q. Of course, the payroll would go down quite a bit,  
2 wouldn't it?

3 A. Yes, but I don't care about that.

4 Q. Okay. New topic.

5 Yesterday, we heard and you were asked a lot of  
6 questions about a letter that you were carbon copied on  
7 that was written by a woman named Mary Kasuba.

8 Do you recall that testimony?

9 A. Yes, I do.

10 Q. Miss Kasuba was the resident care director at  
11 Emerald Hills for a few months in 2007?

12 A. Yes.

13 Q. Now, before receiving --

14 MR. REID: Excuse me. One second, your Honor. I  
15 apologize.

16 (Pause.)

17 Q. (By MR. REID) Before receiving that letter, that  
18 October 12th, 2000 letter from Ms. Kasuba, had you ever  
19 known who she was before that?

20 A. No.

21 Q. Had Miss Kasuba ever reached out to you before  
22 October 12th, 2007 in any way to communicate concerns she  
23 had about the operations at Emerald Hills?

24 A. No.

25 Q. The letter of October 12, 2007 was addressed to the  
26 Executive Director Nancy Cordova, and you were CC'd on it,  
27 correct?

28 A. Yes, including other officers.

1 Q. I want to ask you a couple questions about the  
2 letter. I wonder, could you grab Exhibit 117, sir.

3 THE COURT: Terrance. 117.

4 THE COURT ATTENDANT: Yes, ma'am.

5 **(Joint Exhibit Number 117 was marked for**  
6 **identification.)**

7 Q. (By MR. REID) Does that --

8 MR. REID: May I approach the witness? I'm not sure  
9 if I have the right exhibit number.

10 THE COURT: I don't think it is.

11 MR. REID: Oh, okay. Thirty-nine. I apologize.

12 THE COURT: Thirty-nine.

13 MR. REID: Sorry to make you walk, Terrance.

14 (Pause.)

15 Q. (By MR. REID) Do you have that in front of you now?

16 A. Yes.

17 Q. Okay. And you've already acknowledged that  
18 Miss Kasuba's letter raised what you considered to be some  
19 pretty serious concerns about the operations at  
20 Emerald Hills, correct?

21 A. Yes.

22 Q. And what was your understanding of her -- based on  
23 her letter -- her primary concern at Emerald Hills?

24 A. Her primary concern was the conditions of the  
25 medication -- medication room.

26 Q. Okay. Now, let's stop right there for a second.

27 Did you through investigation through Miss Lisa  
28 Hulse find out that she was right and the medication room

1 was a disaster?

2 A. Could you repeat the question. I'm sorry.

3 Q. Did Miss Hulse inform you that when she went to  
4 investigate Miss Kasuba's letter that there was, indeed,  
5 some real problems with the medication room at  
6 Emerald Hills?

7 A. Yes.

8 Q. And did you confirm for yourself that those problems  
9 were addressed and solved by Miss Hulse's team and the  
10 staff at Emerald Hills --

11 MS. CLEMENT: Leading.

12 Q. (By MR. REID) -- subsequently?

13 THE COURT: Counsel, leading.

14 The objection is sustained.

15 Q. (By MR. REID) Now, Miss Kasuba had other concerns  
16 as well articulated in the letter. And we've talked about  
17 those, true?

18 A. True.

19 Q. Okay. And did Miss Kasuba -- Miss Kasuba set  
20 forth -- did she set forth some ideas that she had of ways  
21 to solve the problems?

22 A. Yes, she did.

23 Q. And did Miss Kasuba indicate whether she intended to  
24 continue working at Emerald Hills?

25 A. Yes.

26 Q. And was there a condition on her continuing to work  
27 at Emerald Hills?

28 A. Yes.

1 Q. What was her condition for her to continue to be  
2 employed at Emerald Hills? And just -- not going into the  
3 details, but you had to do what she wanted you to do,  
4 implement her suggestions?

5 MS. CLEMENT: It's compound, your Honor.

6 MR. REID: I'll strike it and start over.

7 MS. CLEMENT: And it's leading.

8 THE COURT: It is.

9 Mr. Reid, this is your witness.

10 MR. REID: Yes, your Honor.

11 THE COURT: You need to ask him open-ended  
12 questions, direct examination. Do not lead him.

13 MR. REID: Yes, your Honor.

14 Q. (By MR. REID) Do you know, sir, whether  
15 Miss Continue (sic) -- whether Miss Continue (sic)  
16 continued to be employed after she sent this letter?

17 A. No.

18 Q. Do you know one way or the other whether -- I mean,  
19 do you know if she continued to be employed? Yes or no?  
20 Do you know?

21 A. No.

22 Q. You don't know?

23 A. You mean today?

24 Q. After this letter was received, did she remain the  
25 resident care director at Emerald Hills?

26 A. No.

27 Q. Okay. And why did she not remain the resident care  
28 director at Emerald Hills after this letter was received?

1 MS. CLEMENT: Lacks foundation.

2 THE COURT: Sustained.

3 Q. (By MR. REID) Did Miss Kasuba as part of her  
4 demands for changes at Emerald Hills make any requirements  
5 or set forth any requirements concerning the pharmacy  
6 services available to the residents at Emerald Hills?

7 MS. CLEMENT: Leading.

8 THE COURT: Overruled.

9 THE WITNESS: Yes.

10 Q. (By MR. REID) What was her demand that Emeritus  
11 implement concerning pharmacy services?

12 A. She was suggesting -- because medication in her  
13 perception was a big issue at the community, she was  
14 suggesting to mandate all residents to be using the same  
15 pharmacy. And that would be against --

16 Q. Okay. Let me ask you, is that something that  
17 Emerald -- that Emerald Hills -- that Emeritus corporation  
18 can mandate on its residents?

19 A. Absolutely not.

20 Q. Why not?

21 A. First, it would be against resident rights. Because  
22 in a assisted living community, we have to allow our  
23 residents to choose their pharmacy of choice. It's not  
24 like in a nursing home where you're using one pharmacy.

25 Q. Okay. And what was she demanding that Emeritus do?

26 A. She was under the impression that -- you know, maybe  
27 just using one pharmacy for everybody. And that is not  
28 something that's realistic.

1 Q. Now, you testified yesterday, and I think on video,  
2 that you didn't personally investigate Miss Kasuba's  
3 complaints, correct?

4 A. Personally being in the building, no. Personally  
5 following up with Miss Hulse, I did.

6 Q. Okay. So tell me your role in the follow-up  
7 concerning the complaints regarding the pharmacy services  
8 and the operations at Emerald Hills in the October/November  
9 time frame of 2007.

10 A. Again, as I sit here today, it's -- realistically,  
11 it's very hard for me to remember exactly what transpired  
12 between me and Miss Hulse at that time. But based on my  
13 practices and our standards, when concerns such as this is  
14 raised, we make it a point to -- to find out the facts  
15 about it.

16 MS. CLEMENT: Move to strike as nonresponsive.

17 THE COURT: Sustained.

18 Q. (By MR. REID) Let me refer you to Exhibit 110.

19 MR. REID: I believe this has been admitted into  
20 evidence, your Honor.

21 May I display this to the jury?

22 THE COURT: 110 has been admitted. So you can.

23 MR. REID: Thank you, your Honor.

24 THE COURT: Can we get the lights, please.

25 Q. (By MR. REID) What is Exhibit 110, Mr. Amparo?

26 THE COURT: Is it possible for whoever is helping  
27 you to actually blow that up a little bit so that the jury  
28 can see it?

1 Thank you.

2 MR. REID: Thank you, your Honor.

3 Q. (By MR. REID) And I have a pair of reading glasses.  
4 I can --

5 THE COURT: You know, I'm -- can it even go to fill  
6 the screen?

7 THE WITNESS: And like darken the background?

8 MS. FORD: That's -- that's -- I can drop it down  
9 deeper if you give me more direction.

10 THE COURT: I just -- if you're putting it up, the  
11 object is so that they can see it and view it. If they  
12 can't read it, there's no point in putting it up.

13 So if you can just make it larger. I mean, pan out.

14 MR. REID: Let's just take like the first third of  
15 it.

16 MS. FORD: Okay.

17 MR. REID: Is that better?

18 THE COURT: I don't know.

19 Can you all see that?

20 THE COURT: Okay.

21 MR. REID: All right.

22 Q. (By MR. REID) What is Exhibit 110, Mr. Amparo?

23 A. This was an e-mail that was sent by Miss Hulse to  
24 me, dated November 19, 2007.

25 Q. Okay. And what was Miss Hulse communicating to you  
26 in general in this e-mail?

27 A. She's basically going over or listing down things  
28 that she and her team had accomplished, as a follow-up.

1 Q. Okay. And this was -- what was the date on the  
2 e-mail?

3 A. November 19, 2007.

4 Q. All right. So yesterday we heard about a letter  
5 that you had sent to a family, I think the same day or  
6 about the same day.

7 Do you remember that?

8 A. Yes, I do.

9 Q. Okay. And this also follows Miss Kasuba's letter by  
10 about a month; is that correct?

11 A. Yes.

12 Q. And can you tell us what -- tell us what  
13 Miss Hulse's findings were on her investigation and  
14 follow-up to some of these issues.

15 A. Well, based on this document, Miss Hulse validated  
16 some of the concerns that mirrors the letter that was sent  
17 by Miss Kasuba.

18 Q. Okay. And apparently -- was there -- had there been  
19 an issue with some turnover of staff?

20 A. Turnover of staff, as what Miss Hulse had mentioned  
21 here on this e-mail, was a big issue for caregivers.

22 Q. Okay. And then -- and then she -- she did indicate,  
23 "Enlisted assistance from HR to reduce turnover."

24 What does that mean?

25 A. The location of this community is in Auburn and it's  
26 an area that is not easy to recruit staff, so --

27 MS. CLEMENT: Lacks foundation, your Honor.

28 Narrative. Speculative.



1 THE COURT: We need some foundation as to his  
2 knowledge of this information.

3 MR. REID: Thank you, your Honor.

4 Q. (By MR. REID) Actually, let me focus you in.  
5 When it says -- what does it mean, "enlisted  
6 assistance from HR"? What is HR?

7 MS. CLEMENT: Foundation, your Honor.

8 THE COURT: No. He can answer that question.  
9 What is HR?

10 THE WITNESS: Human Resources.

11 Q. (By MR. REID) Okay. And so tell the jury what  
12 is -- what does that mean at Emeritus? What is human  
13 resources?

14 A. Human resources is a department that could be  
15 utilized to assist in performance reviews, recruitment of  
16 staff, development of job descriptions.

17 Q. Okay. So is human -- we know that there's quality  
18 services and operations. Is human resources one of those  
19 resources that Emeritus makes available to the communities?

20 A. Yes.

21 Q. Now, with regard to a concern about the refill  
22 practices, did -- did you become aware that Miss Hulse and  
23 her team implemented new practices for refilling  
24 medications?

25 A. Yes.

26 Q. Okay. And with regard to a concern that the quality  
27 services department needed some strengthening, did you  
28 become aware that efforts were made to educate and work

1 with the executive director on those issues?

2 A. Yes.

3 Q. And let me just clarify. Who was the resident  
4 care -- well, let me ask you this: What director, what  
5 team member at the community level at Emerald Hills was  
6 responsible for the issues that we see here?

7 A. Both the executive director and director of resident  
8 care.

9 Q. Okay. And the immediate -- was the immediate prior  
10 resident care director to this e-mail Mary Kasuba?

11 A. Yes.

12 Q. Okay.

13 MR. REID: Can you scroll it down a little bit,  
14 please.

15 Q. (By MR. REID) All right. We'll sort of move on  
16 here and -- there's a lot of information contained in the  
17 e-mail.

18 There was an -- with regard to the pharmacy itself,  
19 Senior Med Pharmacy, did you become -- was there -- was the  
20 outside pharmacy at all involved with helping Miss Hulse  
21 investigate the situation at Emerald Hills?

22 A. Yes.

23 Q. And is that -- if you could explain to the jury,  
24 what -- is it unusual for the contracted pharmacy to be --  
25 to provide reviews and feedback of the delivery of  
26 medications in an assisted living community?

27 MS. CLEMENT: Leading.

28 THE COURT: He can answer.

1 THE WITNESS: It's not unusual.

2 Q. (By MR. REID) Okay. Explain to the jury, if you  
3 can, what the relationship is between the assisted living  
4 and the contracted pharmacy.

5 A. It's -- a simple way to --

6 MS. CLEMENT: Your Honor, excuse me. It's vague.

7 Is the question to Emerald Hills, to every Emeritus  
8 facility?

9 THE COURT: Sustained.

10 Q. (By MR. REID) Is -- is there a commonality of  
11 how -- well, I think you said before that Emeritus  
12 contracts with a national pharmacy to provide medications  
13 to the facilities, correct?

14 A. Yes.

15 Q. Okay. And so as -- as part of that contract, is  
16 there a -- tell us about what part of that contract  
17 involves the pharmacy providing guidance to the community,  
18 if any?

19 MS. CLEMENT: Foundation as to time, your Honor.

20 MR. REID: Thank you.

21 Q. (By MR. REID) As of 2008.

22 MS. CLEMENT: Still, we don't have foundation.

23 THE COURT: Okay. We're going to take our break.

24 Ladies and gentlemen, leave your notebooks on the  
25 chairs, remember the admonitions. Let's be back ready to  
26 go at a quarter to.

27 Counsel approach, please.

28 (Whereupon an unreported bench conference was then

1 had in open court between the Court and counsel.)

2 (Recess.)

3 (Change of reporters.)

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1 COURT ATTENDANT: All right. Please come to order.  
2 Department 45 is once again in session. You may be seated.

3 THE COURT: We need our witness back on the stand.

4 COURT ATTENDANT: Yes, ma'am.

5 THE COURT: We need all of our phones off.

6 MR. REID: Thank you, your Honor.

7 Q (By MR. REID) Just to finish up with this, um, issue.  
8 Mr. Amparo -- I need to speak up. I'm sorry.

9 Directing your attention to the last bullet point, um,  
10 on Ms. Hulse's e-mail to you. Um, what was your  
11 understanding with regard to other resources that were going  
12 to be utilized to help Emerald Hills at that point in time?

13 A Well, in the last bullet, um, Omnicare pharmacy was  
14 specified. That is the preferred pharmacy provider that I  
15 have used, um, when I was at Summerville. The existing  
16 pharmacy at the time when this matter occurred, um, was  
17 Senior Med. So I decided to, um, um, ask Omnicare pharmacy,  
18 um, to work with Lisa Hulse, um, to basically, um, help  
19 in -- in, um, enhancing or improving the medication system  
20 delivery at the community.

21 Q Were you involved in -- at this point in time, um,  
22 which was around, um, November of 2007, were you involved in  
23 discussions with the current pharmacy provider about their  
24 services that they were providing to, um, the Emeritus  
25 communities?

26 A Yes.

27 Q And did you have discussions with them -- what -- what  
28 kind of discussions did you have with them?

1       A       The -- I had a serious discussion with the existing  
2       pharmacy, which was Senior Med, basically shared with them  
3       concerns, um, that customers or residents have expressed and  
4       staff had expressed.

5               THE COURT: Hold on just a second.

6               Brooke, I'm not on. Go ahead.

7               MR. REID: Thank you.

8       Q       (By MR. REID) And following, um, some time after  
9       November of 2007 was there a change in the pharmacy provider  
10      for the Emeritus communities?

11      A       I couldn't exactly recall the exact time, but, um,  
12      they transitioned to Omnicare pharmacy.

13      Q       And were you involved in the negotiations and the  
14      discussions with the Omnicare?

15      A       I was not primarily responsible for that.

16      Q       And, um, who's the current pharmacy provider for the  
17      Emeritus communities?

18      A       Omnicare pharmacy.

19      Q       And just to clarify, do -- do the residents of the  
20      Emeritus communities have to use Omnicare?

21      A       No.

22      Q       And in addition to delivering the medications to the  
23      Emeritus communities, um, are there any other services that  
24      the pharmacy, um, Omnicare is providing to the communities?

25      A       Absolutely.

26      Q       What kind of services are they providing?

27      A       Um, it's -- the services are a lot better in terms of  
28      having professional, um, pharmacist involved in the, what I

1 call, drug regimen review. They have registered nurses, um,  
2 who would come in as a nurse consultant to provide training,  
3 um, to conduct audits, um, to basically become part of our  
4 support services. Excuse me.

5 I also, um, was able to, um, implement some of the  
6 great things that we have had in the former Summerville  
7 buildings such as having, um, the pharmacy deliver, um --  
8 let's say a family member is getting medication from a  
9 different pharmacy and for some reason they are not able to  
10 deliver the medicine for whatever reason, I specifically  
11 requested Omnicare pharmacy that in those situations that if  
12 they get a call from our staff that they deliver medications  
13 for like three or five days with no questions asked as to  
14 who is going to pay for it because of our national, um,  
15 contract with them.

16 Q And from your -- your position, um, as the vice  
17 president of quality services and in your -- your  
18 involvement in working with the prior pharmacy and the  
19 current pharmacy, um, how would you describe the -- the way  
20 in which the pharmacy is functioning in the communities at  
21 this time?

22 MS. CLEMENT: Objection, vague.

23 THE COURT: Overruled.

24 THE WITNESS: It's absolutely a lot better.

25 Q (By MR. REID) And is that true since the time that  
26 Omnicare took over, whenever that was?

27 A Yes. And, again, um, I -- I don't want to suggest  
28 that it's -- it's perfect, um, but definitely it's better.

1 Q Now, I want to -- we can take that down. Thank you  
2 very much.

3 Um, another topic. Um, we know -- maybe we don't  
4 know. Are you a licensed nurse in the State of California?

5 A Yes.

6 Q And, um, in that capacity and in your leadership  
7 capacity with Emeritus are you familiar with the concept of  
8 a mandated reporter?

9 A Yes, I am.

10 Q And can you explain to the jury what a mandated  
11 reporter is in California?

12 A Um, mandated reporter talks about, um, our  
13 responsibility and obligation -- when I'm saying "our", um,  
14 our staff and anybody at the community at all levels -- to,  
15 um, report any alleged, um, or allegations of abuse and  
16 neglect.

17 Q Okay. And what level of suspicion is a care provider  
18 required to have to trigger their obligation to report?

19 A Trigger, such as a complaint, um, involving, um,  
20 neglect or abuse.

21 Q Okay. Um, what if there is not a complaint and a  
22 caregiver just notices something they think is not right in  
23 terms of the care of a resident, does that trigger a  
24 requirement to report?

25 A It depends.

26 Q Okay. Depends on what?

27 A It depends on, um -- well, when there are concerns,  
28 regardless what it is, major, minor, we always make it a



1 point to investigate it. And then based on the  
2 investigation that would be, um, a determination if it's  
3 something that should be reported, um, by their community.

4 Q Okay. And a mandated reporter, um, who is -- what  
5 entity is supposed to get a report from a mandated reporter  
6 when there is suspected neglect?

7 MS. CLEMENT: Lacks foundation.

8 THE COURT: Could we get some foundation?

9 MR. REID: Sure.

10 Q (By MR. REID) Um, following up on your answer that a  
11 care provider who suspects neglect has to report that, do  
12 you know -- are you familiar with who is -- who they have to  
13 report that suspected neglect to?

14 MS. CLEMENT: Vague, your Honor.

15 THE COURT: Overruled. He can answer.

16 THE WITNESS: To the Department of Social Services.

17 Q (By MR. REID) And you're -- are you familiar with  
18 the, um, training that takes place in the Emeritus assisted  
19 living communities in California, um, for the employees?

20 A Yes.

21 Q Does the training include this obligation to report  
22 suspected abuse?

23 A Yes.

24 Q Now, yesterday you were, um, asked questions about  
25 your role in receiving and reviewing documents from the  
26 department -- documents from the Department of Social  
27 Services concerning their, um, investigations and findings  
28 concerning the communities in California; do you recall

1     that?

2     A       Yes, I do.

3     Q       And can you remind the jury what your -- your role is  
4     in receiving and looking at those documents?

5     A       My role is to, um, review the contents of the  
6     statement of deficiencies and at the same time talk or  
7     collaborate with, um, the divisional vice president of  
8     quality services and identify, um, potential systems  
9     breakdown, um, identify where, if it's a pattern or it's an  
10    isolated matter, and our primary goal is to, um, work  
11    hand-in-hand with Department of Social Services to, um,  
12    correct, um, correct, um, the -- the identified  
13    deficiencies.

14           And there, you know, we -- we go by the, what I call,  
15    five rule when we identify a deficiency. Basically, um,  
16    correcting the deficiency or deficiencies that were  
17    identified, um, identifying other, um, residents that could  
18    potentially be affected by that identified deficiency, um,  
19    identify systems that we could implement to prevent it from  
20    happening again, um, quality assurance and monitoring, and,  
21    of course, a target date as to when we are going to correct  
22    that deficiency.

23    Q       Okay. Now, under the policies and protocols that  
24    you've put in place at Emeritus, when one of the communities  
25    in California gets any kind of a deficiency or report from  
26    the Department of Social Services, what is the expectation  
27    with regard to communicating it to Seattle, to you?

28    A       The expectation is we have for them to complete a form

1     that, um, I have developed, um, wherein they are going to  
2     basically write down, um, findings and that gets to the  
3     Seattle office.

4     Q       And has that practice been in place since the time you  
5     joined Emeritus, um, when the companies merged?

6     A       Since I joined. I -- I instituted it.

7     Q       Now, when the Department of Social Services  
8     investigates a complaint of suspected neglect at an Emeritus  
9     community, does that result in some kind of a document that  
10    is forwarded to you?

11           MS. CLEMENT: Lacks foundation.

12           THE COURT: He can answer.

13           THE WITNESS: Yes.

14    Q       (By MR. REID) Is that a complaint that -- is that the  
15    type of document you've described that you would follow-up  
16    on?

17    A       Yes.

18    Q       In the manner that you've described?

19    A       That's correct.

20    Q       And between the months of August through December of  
21    2007 do you recall receiving any documents from Emerald  
22    Hills that indicated that the Department of Social Services  
23    was investigating a complaint of suspected neglect?

24    A       Not that I remember.

25    Q       Do you have any information that leads you to believe  
26    that Mary Kasuba filed a report of suspected neglect against  
27    Emerald Hills?

28    A       No.

1 MR. REID: I'm getting close to being done.

2 THE WITNESS: Thank you.

3 MR. REID: A couple more topics here.

4 THE COURT: Don't give him false hope now.

5 MR. REID: I won't. I kind of plod along, I know.

6 Q (By MR. REID) I wonder if you could pull up,  
7 Mr. Amparo, Exhibit 222, and I would like to direct your  
8 attention to page 5.

9 Do you have that in front of you?

10 (Joint Exhibit 222 was marked for identification.)

11 A Yes, I do.

12 Q And do you recognize that document?

13 A Yes.

14 Q What is that document?

15 A This is a document, um, called "facility evaluation  
16 report" generated by Department of Social Services, dated,  
17 um, April 10, 2008.

18 THE COURT: I'm sorry, Exhibit 222?

19 MR. REID: I think that is the exhibit. Page 5, your  
20 Honor.

21 THE COURT: Okay. The exhibit that is appended to the  
22 supplemental responses; is that correct?

23 MR. REID: Yes.

24 THE COURT: Okay. Go ahead.

25 MR. REID: Thank you.

26 Q (By MR. REID) And is this also a type of document  
27 that would be generated by the Department of Social  
28 Services, delivered to Emerald Hills and forwarded to you

1 for your review?

2 A Yes.

3 Q And is this the type of document that you, in your  
4 ordinary course of practice, would review as the vice  
5 president of quality services, um, for Emeritus?

6 A Yes.

7 Q Do you have any reason to believe that you did not see  
8 this document, um, in or around April of 2008?

9 A No.

10 MR. REID: And, um, I would like to offer this  
11 exhibit, Exhibit 222, page 5, into evidence, your Honor.

12 THE COURT: Just page 5?

13 MR. REID: At this time.

14 THE COURT: Is there any objection?

15 MS. CLEMENT: May we -- may we be heard, your Honor,  
16 at sidebar?

17 THE COURT: Yes. Come on up quickly, please.

18 MS. CLEMENT: Uh-huh.

19 (Sidebar conference was held.)

20 THE COURT: All right. At this time Exhibit 222, page  
21 5 only, is admitted into evidence.

22 (Joint Exhibit 222, page 5, was admitted into evidence.)

23 MR. REID: Is it all right if we put that up on the  
24 board, your Honor?

25 THE COURT: Yes.

26 MR. REID: And maybe if you could highlight just the  
27 top box there?

28 Q (By MR. REID) So this is the facility evaluation

1 report you were talking about, right?

2 A Yes, it is.

3 Q And can you tell the jury how, um, these -- what your  
4 understanding is of how these reports are generated?

5 A This report is generated, um, out of any kind of visit  
6 that's conducted by Department of Social Services to any  
7 community that they are responsible for.

8 Q Okay. And so what does this document reflect then?  
9 What happened on or about April 10 of 2008?

10 A If you're going to -- well, first, the date, which is  
11 on the right-side column, it says April 10 of 2008. And  
12 then if you flip back to the left side of -- of the document  
13 it says there type of visit. Can you guys see that, type of  
14 visit? It says required five year. Um, that means the  
15 community underwent an inspection from the Department of  
16 Services on that day.

17 Q Okay. And does it indicate approximately how long  
18 the, um, inspection lasted?

19 A If you're going to look and direct your attention on  
20 the right-hand column, um, time began, it says 10:30 a.m.,  
21 and it was completed at around 4:30 in the afternoon.

22 Q There is a word right in the middle under "census", it  
23 says "unannounced." Do you have an understanding of what  
24 that means?

25 A Unannounced, um, is a common practice, um, when there  
26 would be visits conducted by Social Services. There is --  
27 there is no such thing as an announced visit, it's always  
28 unannounced so that they will be able to see what they need

1 to see at the time of inspection.

2 Q Okay. Thank you.

3 Now, if you could highlight the narrative portion,  
4 please? Thank you.

5 Um, so on April 10, 2008, um -- well, let me ask you  
6 this: Understanding that there is a lot of communities that  
7 you're responsible for, when receiving a report like this  
8 one, um, how -- how does -- how do you use that in your  
9 practice in terms of understanding the health or the  
10 vitality of your -- of that particular community?

11 A Well, this document is, um, definitely, um, one  
12 indicator that we utilize to determine how the community is  
13 with their compliance and progress.

14 And in this particular matter, um, all of the reports  
15 are very important to me, but this one, um, was more  
16 significant because, um, the time that it had occurred was  
17 like in April 10 of 2008, and if you're going to look at the  
18 period as to when the issues were raised at the community,  
19 um, it obviously took us some time to implement the changes  
20 necessary to become better.

21 In my own personal opinion of this document, if we are  
22 going to be really looking at this document, this document  
23 is at least showing that the community had achieved some  
24 sort of progress. It's not perfect because it takes some  
25 time to really, um, you know, correct everything, um,  
26 involving that community, but to me this was a reasonable,  
27 um, basis to say that things are better at the community.

28 Q Um, now, on an unannounced five-year visit do you know

1 whether or not the Department of Social Services would be  
2 looking at issues such as staffing levels at the community?

3 MS. CLEMENT: Objection, it lacks foundation, your  
4 Honor, it calls for expert testimony.

5 THE COURT: He asked him does he know so this is the  
6 foundational question.

7 You can answer.

8 THE WITNESS: Yes.

9 Q (By MR. REID) And in your experience when the  
10 Department of Social Services identifies a staffing concern  
11 in a five-year visit like this one, do you expect to see it  
12 in the -- in the report?

13 A Yes.

14 Q Do you know whether the survey includes a analysis of  
15 the quality of the care being delivered to the residents?

16 MS. CLEMENT: I will object to the question, vague.  
17 This document or all surveys?

18 THE COURT: Sustained.

19 Q (By MR. REID) With a five-year day-long annual  
20 inspection of a community by the Department of Social  
21 Services, do you know if they are evaluating in that process  
22 the quality of the care that's being delivered to the  
23 residents?

24 A Yes.

25 Q And has it been your practice, your experience and  
26 practice that when the Department of Social Services  
27 identifies deficits in the quality of the care that's being  
28 delivered to the residents that that would be noted and



1 identified as a deficiency in the report?

2 A Yes.

3 Q And in April 10 -- on April 10 of 2008, in that  
4 timeframe, did the Department of Social Services identify  
5 staffing or quality of care related issues?

6 MS. CLEMENT: Vague.

7 THE COURT: Overruled.

8 THE WITNESS: Based on the document, no.

9 MR. REID: Now, I only put the one page in, but to be  
10 fair, there is page 222-06 which I would also move into  
11 evidence.

12 THE COURT: Any objection?

13 MS. CLEMENT: No, your Honor.

14 THE COURT: All right. Page 6 is also admitted as  
15 part of Exhibit 222.

16 (Joint Exhibit 222, page 6, was admitted into evidence.)

17 Q (By MR. REID) Do you have that in front of you?

18 A Yes, I do.

19 Q So tell the jury what page 6, um, reflects?

20 A On page 6 -- this is, um, page 2, the first document  
21 you saw on the screen, and, um, Department of Social  
22 Services identified, um, two deficiencies.

23 The first deficiency pertains to storage space, and  
24 the second deficiency was on medications centrally stored.  
25 Locked -- unlocked medication, um, were observed in, um, in  
26 three residents's apartments.

27 MR. REID: Okay. So, um, is it all right if we put  
28 that on the screen, your Honor?

1 THE COURT: It's okay with me.

2 Q (By MR. REID) All right. So it wasn't perfect, they  
3 found some deficiencies in the survey, correct?

4 A That's correct.

5 Q All right. And is this -- does this -- these two, um,  
6 these two paragraphs in the left column reflect the  
7 deficiencies they found during their survey?

8 A Yes.

9 Q Okay. And what's the column on the right?

10 I wonder if you can include the language just above  
11 those columns, Holly?

12 What's the column on the right represent?

13 A The column on the right on the heading, if you're  
14 going to look at it, it says "plan of correction", or  
15 sometimes they call it POCs. So the community, um, in  
16 partnership with the Department of Social Services inspector  
17 who did the unannounced visit, um, would be coming up with a  
18 plan of correction. So the, um, items listed here, um,  
19 basically is plan of -- of that correction.

20 Q Okay.

21 A Part of that plan of correction. I'm sorry.

22 Q And when the fac -- does the facility prepare the plan  
23 of correction or prepare that language?

24 A Normally there would be, um, documentation that would  
25 be generated at the community level, um, to -- to details,  
26 yes.

27 Q And then the Department of Social Services either says  
28 that's fine, we agree with the plan, or you need to do

1 something different?

2 A That is correct.

3 Q Okay. So as of April 2008 -- well, let me ask you  
4 this: When you get a five year, um, survey from a  
5 community, do you have a system either formal or informal  
6 where you classify them as either good surveys or bad  
7 surveys or some numbering system or something like that?

8 A Um, no. But to me when I'm looking at this thing it's  
9 not just the overall outcome, whether it's good or bad, I  
10 personally educate my direct reports. Regardless whether  
11 it's one deficiency or two deficiency, whether it's minor or  
12 major, we -- we treat them all equal. The most important  
13 part is, again, to develop a plan of correction so that it  
14 could be corrected.

15 Q Considering the issues that had been brought to your  
16 attention that we have talked about in, um, October,  
17 November, um, February -- of 2007 and in February of 2008,  
18 what, um, was your reaction to receiving this survey in  
19 April of 2008?

20 A My reaction was, um, it gave me the impression that  
21 what we instituted to correct and rectify, um, concerns that  
22 were raised, um, by Ms. Kasuba, um, raised by the other  
23 family member, um, that were identified, also when they  
24 conducted a comprehensive process review or CPR were  
25 addressed.

26 Q Now, different topic, and I will move through this as  
27 fairly quickly but --

28 THE COURT: Can we get the lights, please?

1 Q (By MR. REID) Yesterday Ms. Clement asked you whether  
2 you had ever reviewed Mrs. Boice's, um, chart from Emerald  
3 Hills; do you recall that?

4 A Yes.

5 Q And you said that you had, right?

6 A Yes.

7 Q When -- when about was it that you reviewed  
8 Mrs. Boice's chart from Emerald Hills?

9 A It's been quite a while. It was at the time that the  
10 litigation became -- I don't know if I have the right  
11 word -- became active.

12 Q And, um, she asked you whether you formed an  
13 opinion -- well, let's back up a step.

14 Before there was a lawsuit and litigation, had you  
15 ever reviewed anything concerning Mrs. Boice's residency at  
16 Emerald Hills?

17 A No.

18 Q Did you have any information whatsoever of any  
19 complaints that the Boice family had concerning her, um,  
20 stay at Emerald Hills?

21 A Not that I remember.

22 Q When Ms. Clement asked you -- confirmed that you  
23 reviewed the chart, she asked you whether you had formed an  
24 opinion at that time whether the Emerald Hills staff met the  
25 standard of care; do you recall that?

26 A Yes.

27 Q And what was your answer?

28 A That I believe that they did met the standards of

1 care.

2 Q Okay. And help us, please tell the jury, what does  
3 that mean in your opinion that the care met the standard of  
4 care?

5 A Excuse me. Um, again, it's -- it's been quite some  
6 time that I had reviewed their record, so this is just my  
7 general opinion of what I remember when I -- when I reviewed  
8 the record. After reviewing the record I would like to  
9 admit that we could have done a better job in terms of  
10 documentation, but overall the staff did what they can do to  
11 meet the needs of -- of Mrs. Boice. It is very difficult,  
12 I'm sure, for the family, um --

13 MS. CLEMENT: Your Honor, it's a narrative, it's not  
14 responsive. Move to strike.

15 THE COURT: Sustained.

16 MR. REID: Okay.

17 Q (By MR. REID) Um, first, let's just understand what  
18 that term means, um, standard of care. What is a standard  
19 of care?

20 A Standard of care is doing, um, things that are  
21 considered reasonable given similar circumstances.

22 Q And does it imply, um -- does it imply -- when you say  
23 that you thought your -- your impression was that the care  
24 met the standard of care, does that imply that you didn't  
25 think that they did everything perfect?

26 A No, they didn't do things perfectly.

27 Q Um, do you recall identifying areas where you thought  
28 that the staff in retrospect may have done a better job?

1 A Just on the documentation part.

2 Q Um, how do you -- how does -- as you're thinking about  
3 looking at a chart and thinking about whether the care met  
4 the standard of care, um, how does compliance with the  
5 Emeritus policies factor into that, if at all?

6 A Our company have policies and procedures that, um,  
7 we -- we develop. My expectation, and the company's  
8 expectation, is to, um, follow those policies and  
9 procedures.

10 Q Okay. If the -- if you find that the staff didn't  
11 fully follow and comply with the policies and procedures,  
12 does that automatically, in your mind, mean they didn't  
13 comply with the standard of care, or how does that -- how  
14 does your analysis work?

15 MS. CLEMENT: Leading.

16 THE COURT: Overruled.

17 THE WITNESS: Those are two different things.  
18 Policies and procedures are -- I refer to them as a  
19 reference, a guide. Um, some of our policies and procedures  
20 are actually more stringent compared -- if you are going to  
21 compare it as to, um, some of the state requirements, which  
22 we did it on purpose, we wanted it to be better. Um, but  
23 let's say a, um, caregiver, anybody from the staff, um, was  
24 not able to follow, um, policy and procedure, I personally  
25 do not equate that as a violation of standard of care.

26 Q (By MR. REID) Um, different topic. Yesterday you  
27 were asked whether in nursing school you were ever taught  
28 this notion if it's not written down it didn't happen; do

1     you remember that?

2     A       Yes.

3     Q       Okay. And that certainly -- is that -- is that a  
4     phrase you're familiar with?

5     A       I've heard it, yes.

6     Q       Is it a phrase that you may have said to other people  
7     in the course of your career as a nurse?

8     A       Probably.

9     Q       Okay. Um, is it -- is it a true statement of -- of  
10    fact?

11    A       Not in real life, not necessarily.

12    Q       Why would you, in coaching and training, um, a nurse  
13    or a caregiver say, look, if it's not written down it didn't  
14    happen? Why would you tell them that if it's not  
15    necessarily a true, um, directive?

16    A       Well, I -- I say that because it's -- I say to our  
17    staff to make sure that you document, um, things that would  
18    reflect services or interventions that you have carried out.  
19    But the way I phrase it is not as like if you didn't  
20    document, you didn't do it. What I tell them is take credit  
21    for what you've done and without documenting it you're not  
22    taking credit for things that you've done.

23           And in -- in a real world, um, when I was, again, a  
24    director of nurses and a staff nurse, there are a lot of  
25    training that could take place, considered informal  
26    training, at the bedside, and, um, we unfortunately don't  
27    document all of those all of the time.

28           MS. CLEMENT: Move to strike as non-responsive, your

1 Honor.

2 THE COURT: Overruled.

3 Q (By MR. REID) Um, yesterday you were asked whether  
4 you knew whether the training for the caregivers at the  
5 Emeritus assisted living communities included, um, training  
6 regarding skin breakdown; do you recall that?

7 A Yes.

8 Q And I think yesterday on the stand you said that it  
9 did include -- that that was included in the training,  
10 right?

11 A Yes.

12 Q And then we saw a clip from your deposition where you  
13 have said you didn't know?

14 A Yes.

15 Q So how come the different answer here in court today  
16 or yesterday?

17 A Um, at the time of deposition I didn't have much more  
18 information. Um, between the time of the deposition, um,  
19 and then now I was able to do some reflection and, um,  
20 identified that training, um, took place.

21 Q How many days did you sit for deposition?

22 A Three days.

23 Q Do you like what you do?

24 A Very much.

25 Q Why?

26 A I have, um -- nursing was not something that I liked  
27 initially. I wasn't sure if it's something that I like. I  
28 have four siblings, all of them in their 60s. My -- both of



1 my parents are in their 80s. They were the ones who  
2 suggested that I try nursing. I tried nursing. I fell in  
3 love with it.

4 I think I cannot see myself doing anything other  
5 different than what I'm doing right now. I am just  
6 fortunate, um, very fortunate enough that I was given the  
7 opportunity to be in my position right now because when  
8 you're in this type of position I have the ability to  
9 influence, inspire people and hopefully develop, um,  
10 practices, best practices that I have identified over the  
11 years from the different experiences that I have had that  
12 would benefit every single senior that, um, I'll be in  
13 contact with or Emeritus would be in contact with, um, and  
14 the same thing with our staff.

15 This also have allowed me, um, to be a pillar not only  
16 within -- within the company, um, I think, um, I have been  
17 viewed also as a pillar of -- of the nursing profession.  
18 And I would like to serve, um, to be an inspiration, um, to  
19 future generations and hopefully be able to uphold and, um,  
20 provide better services, um, to whether patients younger,  
21 um, older, um, regardless of what it is. And to me that's  
22 the whole essence of what I do, the whole essence of who I  
23 am, and the whole essence of my philosophy in life.

24 MR. REID: No more questions. Thank you, your Honor.

25 THE COURT: Ms. Clement?

26 MS. CLEMENT: Yes.

27 /////

28 /////

## 1 RECROSS-EXAMINATION

2 BY LESLEY A. CLEMENT, Attorney at Law, Counsel on behalf of  
3 the Plaintiffs:

4 Q Mr. Amparo, do you love the \$700,000 a year you make  
5 at Emeritus?

6 MR. REID: Objection, your Honor, that is irrelevant.

7 MS. CLEMENT: Bias.

8 MR. REID: I think it violates standing orders of the  
9 Court, um --

10 THE COURT: Objection is overruled.

11 THE WITNESS: I'm sorry. Repeat the question.

12 Q (By MS. CLEMENT) Do you love the \$700,000 a year you  
13 make at Emeritus?

14 A No.

15 Q How about all of the stock options they give you?

16 A No.

17 Q You told us about that move that you made from  
18 California to Washington, that was hard for you?

19 A Yes.

20 Q Didn't Emeritus give you a million dollars for your  
21 house down here so you could buy something up there?

22 A No.

23 Q Isn't that what was reported in the Emeritus, um,  
24 filings with the Securities Exchange Commission, sir?

25 A No.

26 Q So the standard of care that you just talked about,  
27 doesn't that mean following the law, the regulations, Title  
28 22?

1 A No.

2 Q Okay. So in your mind, as the pillar, the head nurse  
3 of Emeritus, the top executive, the standard of care does  
4 not include following the regulations that govern assisted  
5 living facilities in this State?

6 A Don't get me wrong, we -- I make it a point to  
7 emphasize that we follow what's required by -- by law.  
8 That -- that is important.

9 MS. CLEMENT: Move to strike as non-responsive.

10 THE WITNESS: But I cannot --

11 THE COURT: Sustained.

12 Q (By MS. CLEMENT) Mr. Amparo, the question is,  
13 standard of care, are you suggesting to the jurors that the  
14 standard of care does not include following the regulations  
15 that govern assisted living facilities?

16 A It depends.

17 Q Now, you also suggested that these policies and  
18 procedures that you testified under oath and we saw it twice  
19 that you require your facilities to follow, now those are  
20 just, what, guidelines, suggestions?

21 A Yes.

22 Q And when you reviewed Mrs. Boice's medical chart from  
23 three years ago, some three years ago, you didn't think  
24 there were any standard of care violations; true?

25 A True.

26 Q So you didn't have a problem with them not following  
27 Dr. Awan's order that Mrs. Boice be transferred to have  
28 x-rays of her right foot and ankle on October 14th when she

1 was experiencing more frequent and intense pain and could no  
2 longer bear weight?

3 A I do have a concern.

4 Q You don't think that is a violation of the standard of  
5 care, sir, as a nurse to not follow a physician's order?

6 A No.

7 Q Is that a standard of care violation to not follow a  
8 doctor's order?

9 A It depends.

10 Q Okay. But in Mrs. Boice's case when Emeritus is  
11 getting sued it's not a standard of care violation; true?

12 A It depends.

13 Q How about not giving Mrs. Boice her medications as  
14 ordered. You reviewed her chart, you looked at her  
15 medication administration record; true?

16 A Yes.

17 Q And you saw lots and lots of days in her chart where  
18 she wasn't getting her medications as ordered by a  
19 physician; true?

20 MR. REID: It's vague.

21 THE COURT: Overruled. You can answer.

22 THE WITNESS: Again, it's been three years since I  
23 reviewed it, so I couldn't remember exactly what I saw in  
24 that aspect of that record.

25 Q (By MS. CLEMENT) You didn't review that again to  
26 prepare for your testimony today?

27 A No.

28 Q But you still feel comfortable on the stand testifying

1     that Emeritus never fell below the standard of care; true?

2     A     Yes.

3     Q     Now, you testified yesterday afternoon that the  
4     typical Emeritus resident is independent and they just go to  
5     the bank and they scoot around all on their own, right?

6     A     Yes.

7     Q     And you really believe that, sir?

8     A     Yes.

9     Q     When you say "the typical resident", do you mean most  
10    of the residents in the facilities?

11    A     It depends.

12    Q     Well, isn't it true you don't really know what a  
13    typical resident is like if you're claiming -- well, I will  
14    withdraw the question, your Honor.

15            You've never actually been to Emerald Hills, have you?

16    A     No.

17    Q     No. And you never went there when Mrs. Boice lived  
18    there?

19    A     No.

20    Q     And you never went there when you got the Mary Kasuba  
21    letter?

22    A     No.

23    Q     You never went there when you got the letter from the  
24    family that was concerned about the serious medication  
25    errors?

26            MR. REID: That is asked and answered, your Honor.

27            THE COURT: Sustained.

28    Q     (By MS. CLEMENT) And you have never actually done any

1 kind of an analysis as to what the level of care is of the  
2 residents at Emerald Hills? So, in other words, what the  
3 typical resident at Emerald Hills looks like?

4 A No.

5 MR. REID: It's vague and compound.

6 THE COURT: Overruled. But it was asked and answered,  
7 so let's go on.

8 Q (By MS. CLEMENT) So, for example, you don't know that  
9 at the time Mrs. Boice was a resident 70 percent of the  
10 residents were being charged the highest level of care at  
11 Emerald Hills that Emeritus charges?

12 MR. REID: I will object, it's not relevant, your  
13 Honor.

14 THE COURT: Overruled.

15 THE WITNESS: Could you please repeat the question?

16 MS. CLEMENT: Yes.

17 Q (By MS. CLEMENT) You don't know that at the time  
18 Mrs. Boice was a resident 70 percent of the residents living  
19 there were being charged the highest level of care that  
20 Emeritus provides?

21 A No.

22 Q And so when someone is being charged at the highest  
23 level of care that Emeritus provides, that means that they  
24 are at the highest acuity, correct?

25 A Yes.

26 Q Does that sound like the typical Emeritus resident  
27 that is just driving to the bank and scooting around on  
28 their own?

1 MR. REID: It's vague, your Honor.

2 THE WITNESS: No. But you have to remember --

3 THE COURT: It -- it --

4 THE WITNESS: Oh.

5 THE COURT: I think Ms. Clement is attempting to use  
6 hyperbole or irony as part of her question. Rephrase the  
7 question.

8 MS. CLEMENT: It was actually his testimony yesterday,  
9 your Honor.

10 THE COURT: You are quoting exactly the words that he  
11 used?

12 MS. CLEMENT: My -- my notes reflect that he said, The  
13 typical resident in Emeritus goes to the bank and gets  
14 around on their own, they are independent.

15 THE COURT: Okay. Gets around on their own.

16 MS. CLEMENT: Oh, I'm sorry. Excuse me.

17 THE COURT: Okay. Rephrase.

18 MS. CLEMENT: Certainly.

19 Q (By MS. CLEMENT) The typical Emeritus Emerald Hills  
20 resident wasn't one who was going to the bank independently  
21 and getting around on their own; true?

22 A Not true.

23 Q So yesterday I think you likened Emeritus to, um, a  
24 hotel, right?

25 A Yes.

26 Q Is that what you advertise, Emeritus, these assisted  
27 living facilities, are hotels?

28 A I'm trying to recall my answer yesterday, and my

1 understanding was, um, how I would describe an assisted  
2 living community.

3 Q Are you serious that you think that a residential care  
4 facility for the elderly, which is what California  
5 facilities are known as, is a hotel?

6 MR. REID: That misstates his testimony and it's  
7 argumentative, your Honor.

8 THE COURT: Overruled.

9 THE WITNESS: I think I was just trying to explain,  
10 um, the best way I could, um, to describe how the set-up is  
11 in terms of the -- I think I mentioned about you're paying  
12 for the room and lodging and that's basically similar to an  
13 assisted living setting. I also mentioned that one of the  
14 differences would be we have ancillary services that we  
15 offer in an assisted living setting.

16 Q (By MS. CLEMENT) Emeritus is the largest provider of  
17 dementia care in the country, correct?

18 A Yes.

19 Q So you have more people, American elders that you are  
20 serving in your dementia units than anyone else in the  
21 country?

22 A Yes.

23 Q Are those dementia Memory Care Units hotels?

24 A No.

25 Q Are the staff members maids?

26 A Excuse me? I'm sorry.

27 Q Are the staff members at Emeritus, the caregivers, the  
28 med techs, the resident assistants, are they maids?



1 A No.

2 Q They are actually supposed to be providing hands-on  
3 care to the residents; true?

4 A Yes.

5 Q Do you get that in a hotel?

6 A No.

7 Q Now, yesterday you told us, um, that Emeritus doesn't  
8 allow its nurses to really be nurses; do you remember that?

9 A Yes.

10 Q Can you turn to Exhibit Number 89?

11 THE COURT: Terrance, can I get 89, please? Terrance,  
12 89?

13 (Joint Exhibit 89 was marked for identification.)

14 MS. CLEMENT: I think we can leave the lights on.

15 THE COURT: Okay. Can we have the lights, please?

16 MS. CLEMENT: Thank you.

17 Q (By MS. CLEMENT) Can you turn to pages 5, 6 and 7?

18 A Excuse me. Ms. Clement, I might have pulled the  
19 wrong -- you said exhibit...

20 Q Exhibit 89.

21 A Okay. And you said page...

22 Q Excuse me. 6 and 7.

23 A Okay.

24 Q And are these two pages the job description by  
25 Emeritus for the resident care director?

26 A Yes.

27 Q And this is the facility nurse?

28 A Yes.

1 MS. CLEMENT: Your Honor, at this time I would like to  
2 offer into evidence Exhibit 89, pages 6 and 7 only.

3 MR. REID: No objection, your Honor.

4 THE COURT: All right. Pages 6 and 7 only of Exhibit  
5 89 are admitted.

6 (Joint Exhibit 89, pages 6 and 7, was admitted into  
7 evidence.)

8 MS. CLEMENT: Terrance, can we have the lights down?  
9 Can you pull up the "purpose", please?

10 Q (By MS. CLEMENT) So is it true, Mr. Amparo, that the  
11 job descriptions for each, um, director and caregiver job  
12 title, um, in Emeritus assisted living facilities are  
13 actually written and given to the employees and they are  
14 required to sign them?

15 A Yes.

16 Q And these job descriptions are supposed to outline  
17 what the staff are supposed to do?

18 A Yes.

19 Q And if we look at the purpose for the nurse at the  
20 facility, her job is to coordinate and supervise the  
21 personnel and wellness department, and that's the caregivers  
22 and med techs, right?

23 A Yes.

24 Q And her job is to do this in accordance with the  
25 residents's needs, state regulations, and Emeritus policies  
26 and procedures; true?

27 A True.

28 Q And she is supposed to maintain excellent services?

1 A Yes.

2 Q In order to do that she needs enough people who are  
3 trained and qualified and supervised to carry out the needs  
4 of the residents; true?

5 A True.

6 Q And her -- also her purpose includes maintaining high  
7 occupancy in the buildings, correct?

8 A Yes.

9 Q And that's a nursing job?

10 A No.

11 Q Since when were nurses supposed to be sales and  
12 marketers, sir?

13 A They are not.

14 Q But that is what Emeritus has their nurses do,  
15 correct?

16 A No.

17 Q It's right in their job description, sir, isn't it?

18 MR. REID: Well, that is argumentative, and the  
19 document speaks for itself.

20 THE COURT: She is asking him a question. He can  
21 answer.

22 THE WITNESS: The job description was already present  
23 when we merged.

24 Q (By MS. CLEMENT) Is it your sworn testimony,  
25 Mr. Amparo, that this job description was dated before the  
26 merger?

27 A I'm not sure.

28 Q And does it matter if it was before the merger, the

1 job description or not, that this was the job description  
2 for Peggy Stevenson, the resident care director when  
3 Mrs. Boice was there?

4 A I think it does.

5 Q Hum. And her other job description or purpose is to  
6 meet community financial goals; is that true?

7 A No.

8 Q Is that what her job description says?

9 A Yes.

10 Q Since when are nurses supposed to be worried about  
11 meeting financial goals of Emeritus?

12 A They are not supposed to.

13 Q Isn't that what Emeritus requires, according to their  
14 job description?

15 A That's what the document says, yes.

16 Q Okay. Can you take us up to the next highlight?

17 Now, you told us that she wasn't actually supposed to  
18 be a nurse, but according to the job description it says she  
19 is supposed to perform licensed nurse tasks within the scope  
20 of her practice; true?

21 A Yes.

22 Q In order for her to actually act like a nurse in the  
23 facility she has got to have time to do that?

24 A Yes.

25 Q So she can't really be focusing on sales and marketing  
26 and company financial goals, she needs to be really focused  
27 on nursing, right?

28 A That's right.

1 MR. REID: It's vague and compound and lacks  
2 foundation.

3 THE COURT: Overruled.

4 MS. CLEMENT: Next, Eric, please.

5 Q (By MS. CLEMENT) And she is limited, um -- the  
6 licensed nurse in the building, the resident care director,  
7 she is limited by the budgetary limits that corporate sets  
8 for about how many staff hours she can schedule; true?

9 A Yes.

10 Q Because that nurse has no control over the budget;  
11 true?

12 MR. REID: Lacks foundation.

13 THE COURT: Overruled.

14 THE WITNESS: No.

15 Q (By MS. CLEMENT) No, it's not true?

16 A As far as I know they have some say about it.

17 Q Is it your testimony, Mr. Amparo, that Peggy Stevenson  
18 had control over the budget that Emeritus set for Emerald  
19 Hills when Mrs. Boice was a resident?

20 A Not control, but has input.

21 Q What input exactly did Peggy Stevenson have, sir?

22 A I couldn't speak for that because I wasn't there.

23 Q You don't know, right?

24 A Yes.

25 Q Can you just turn to the second page of this document  
26 and show the signature line and blow that up?

27 Now, with regard to this issue of mandated  
28 reporting -- I'm sorry, the lights. You can drop that.

1 Thanks.

2 This issue of mandated reporting, you too are a  
3 mandated reporter, correct?

4 A Yes.

5 Q And everybody that works for Emeritus is mandated  
6 reporters, correct?

7 A Correct.

8 Q And the training that Emeritus provides, in fact  
9 really their unwritten policy is to tell employees that they  
10 are supposed to report any suspected neglect to their  
11 supervisors; true?

12 A Yes.

13 Q And they are supposed to, if they have concerns, use  
14 the ethics hotline that Emeritus has; true?

15 A What time period?

16 Q Since you've been at the company there has been a  
17 hotline for the employees where they can call and voice  
18 concerns about ethical issues including neglect or suspected  
19 neglect of residents; true?

20 A True, but not ethics first.

21 Q There has always been a hotline, but by 2008 they  
22 actually named it the "ethics hotline"?

23 A I'm not sure if there is a hotline, but there is, um,  
24 an avenue to send those concerns.

25 Q Are you telling me, Mr. Amparo, you don't remember  
26 testifying about the ethics hotline that was in effect in  
27 2008 when Mrs. Boice was a resident?

28 A I did. I -- I remember having the ethics -- ethics

1 first being in place, I just couldn't exactly remember when  
2 time frame was.

3 Q Okay. So the ethics first hotline, the employees are  
4 told that is the first thing they should do if they suspect  
5 anything about neglect or abuse or any issues regarding  
6 moral or ethic issues, correct?

7 A No, not -- that is not my understanding.

8 Q Well, that is exactly what they are told in their  
9 handbooks and what they are told by Emeritus.

10 THE COURT: Are you testifying?

11 MS. CLEMENT: No.

12 Q (By MS. CLEMENT) Isn't that -- isn't that what they  
13 are told, Mr. Amparo, that they are to use the ethics  
14 hotline -- the ethics first hotline?

15 A They use ethics hotline for...

16 Q To report concerns that they have in the facility as  
17 it relates to resident care?

18 A Yes. it's one way, one system we have.

19 Q And you know that the ethics hotline is actually  
20 answered by the legal department at Emeritus headquarters in  
21 Seattle, right?

22 A I thought it was under administration.

23 Q Now, have you personally ever reported any suspected  
24 neglect or abuse of a Emeritus resident?

25 A No.

26 Q For example, when we talked about that, um, resident  
27 of Emeritus in southern California that had the multiple  
28 stage 4 bed sores involving muscle, had to go to the

1 hospital, you didn't report that, did you?

2 MR. REID: She is misstating the evidence, your Honor,  
3 and arguing.

4 THE COURT: I don't specifically recall the reference  
5 to muscle, but, um, could you rephrase the question, please?

6 MS. CLEMENT: Yes.

7 Q (By MS. CLEMENT) Stage 4 pressure ulcers, you told us  
8 those were pressure ulcers that could involve muscle and  
9 bone, right?

10 A Correct.

11 Q Those are the worse type of pressure ulcers, they go  
12 from stages 1 through 4, and 4 is the worse, right?

13 A Yes.

14 Q And residents can die from those, correct?

15 A Possible.

16 Q And you didn't report those pressure ulcers from that  
17 resident to the Department of Social Services, did you?

18 A I think a little bit -- I think I need a little bit  
19 more specific.

20 Which resident are we talking about?

21 Q Chatsworth, sir. The Chatsworth incident that we went  
22 over in great detail yesterday.

23 A No.

24 Q So, for example, there is -- you've been told about  
25 facilities in California where residents were neglected and  
26 yet you never reported those instances of neglect to the  
27 Department of Social Services or Adult Protective Services  
28 or anyone, correct?



1 A Yes.

2 Q I want to talk to you now about some Emeritus  
3 policies. You told us that you are one of the policy-makers  
4 at Emeritus; true?

5 A True.

6 Q As it relates to quality services you are the leader  
7 of Emeritus in creating policies?

8 A Yes.

9 Q And those policies are company wide, correct?

10 A Yes.

11 Q And do you -- then you kind of went off on this topic  
12 about how individual facilities can create their own  
13 policies; do you remember that testimony?

14 MR. REID: I think it misstates his testimony.

15 THE COURT: Overruled.

16 THE WITNESS: I don't know if it's create their own  
17 policy or make suggestions to policies that we have  
18 developed.

19 Q (By MS. CLEMENT) Do you know of any memorandums or  
20 anything in writing that's ever gone out to any Emeritus  
21 facility where it says they can veer from the Emeritus  
22 policies and create their own?

23 A No.

24 Q Okay. Because that is not actually true, is it, they  
25 can't?

26 A They can.

27 Q Do you know if Emerald Hills ever created their own  
28 policies?

1 A No.

2 Q Can you pull Exhibit Number 118?

3 I understand by stipulation, your Honor, that these --  
4 these are the policies and procedures in place at Emeritus  
5 at the time that Mrs. Boice was a resident.

6 (Joint Exhibit 118 was admitted into evidence.)

7 THE COURT: Accurate, Mr. Reid?

8 MR. REID: At that community, that's correct, your  
9 Honor.

10 THE COURT: Okay.

11 Q (By MS. CLEMENT) These policies and procedures were  
12 not exclusive to Emerald Hills, these were the policies and  
13 procedures that were in effect for Emeritus facilities at  
14 least in the State of California; true?

15 A Yes.

16 MS. CLEMENT: At this time I would like to move  
17 Exhibit Number 118 into evidence, your Honor.

18 THE COURT: Any objection?

19 MR. REID: No, your Honor.

20 THE COURT: All right. Let's move them into evidence,  
21 and let's take our lunch break now.

22 (Joint Exhibit 118 was moved into evidence.)

23 MS. CLEMENT: Okay. Thank you.

24 THE COURT: Ladies and gentlemen, leave your notebooks  
25 on the chairs. Remember the admonitions. I will see you at  
26 1:30.

27 And if Counsel could remain for one moment, please.

28 /////

1     **(The following proceedings were held outside the presence of**  
2                                   **the jury:)**

3           THE COURT:   ALL right.   Who is Jonathan Jones?

4           AUDIENCE MEMBER:   Me.

5           THE COURT:   Sir, are you a witness in the case?

6           AUDIENCE MEMBER:   I am not.

7           THE COURT:   Do you have an attorney?

8           AUDIENCE MEMBER:   I don't, with me.

9           THE COURT:   Okay.   Then this -- Alicia, could you come  
10   in, please?

11           Mr. Jones apparently is in the courtroom, and he says  
12   he is not a witness in the case.

13           I received an e-mail from my clerk about some witness  
14   being represented by an attorney.

15           THE CLERK:   His attorney's office called and said  
16   that, um -- I'm sorry, I don't have it in front of me.

17           Is it Mr. Burns?

18           THE COURT:   Steve Burns.

19           THE CLERK:   Steve Burns is the attorney to reporter  
20   Jonathan Jones and will be representing him and will be here  
21   this afternoon.

22           THE COURT:   Do you know anything about this, sir?

23           AUDIENCE MEMBER:   No.   I had heard that there was some  
24   discussions yesterday about my presence here so I contacted  
25   him.

26           I'm with PBS Frontline.   I'm a journalist.   I'm  
27   covering this case as part of a documentary we are working  
28   on about assisted living, so maybe that is where the

1 miscommunication came from.

2 THE COURT: There was no concern about you being  
3 present in the courtroom. One of the Counsel said to me  
4 that they thought there was media in the courtroom, and I  
5 didn't recognize our normal, quote, media.

6 AUDIENCE MEMBER: Sure.

7 THE COURT: So that was the only discussion, but  
8 you're entitled to be here.

9 AUDIENCE MEMBER: Yeah. I didn't know the attorney  
10 had contacted. I think that this is --

11 THE COURT: Okay. Well, I don't have any legal issues  
12 with you, and I don't need to talk to your attorney unless  
13 you think I need to talk to your attorney.

14 AUDIENCE MEMBER: No. I didn't even know that that  
15 had occurred.

16 THE COURT: Okay. Well, give my regards to Mr. Burns.  
17 We are in recess. Thank you.

18 MS. CLEMENT: Thank you, Judge.

19 (Lunch recess.)

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1 WEDNESDAY, JANUARY 9, 2013

2 AFTERNOON SESSION

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4 The matter of JOAN BOICE, by and through her  
5 Successor-in-Interest, ERIC BOICE, and ERIC BOICE, NANCEE  
6 BOICE, and MARK BOICE, individually, Plaintiffs, versus  
7 EMERITUS CORPORATION dba EMERITUS AT EMERALD HILLS,  
8 Defendant, Case Number 34-2009-00063714, came on regularly  
9 this day before Honorable JUDY HOLZER HERSHER, Judge of the  
10 Superior Court of California, for the County of Sacramento,  
11 Department 45.

12 The Plaintiffs, JOAN BOICE, by and through her  
13 Successor-in-Interest, ERIC BOICE, and ERIC BOICE, NANCEE  
14 BOICE and MARK BOICE, were represented by LESLIE A.  
15 CLEMENT, Attorney at Law; VALERIE DAWSON, Attorney at Law  
16 (not present); ASHLEY BAIRD, Attorney at Law; and SEAN  
17 LAIRD, Attorney at Law.

18 The Plaintiffs, ERIC BOICE and MARK BOICE were  
19 present.

20 The Defendant, EMERITUS CORPORATION dba EMERITUS AT  
21 EMERALD HILLS, was represented by BRYAN R. REID, Attorney  
22 at Law; RIMA BADAWIYA, Attorney at Law; and KIM M. WELLS,  
23 Attorney at Law.

24 Also present on behalf of the Defendant, EMERITUS  
25 CORPORATION dba EMERITUS AT EMERALD HILLS, was JANET E.  
26 McKINNON, Vice President of Legal Affairs; LISA HULSE, Vice  
27 President Quality & Risk Management; and HOLLY A. FORD,  
28 Trial Consultant.

1           **(The following proceedings were then had in open**  
2 **court, in the presence of the jury.)**

3           THE COURT ATTENDANT: All rise.

4           Department 45 of the Sacramento Superior Court is  
5 now in session. The Honorable Judge Judy Hersher  
6 presiding.

7           You may be seated.

8           MS. CLEMENT: Thank you, your Honor.

9           At this time, I'd like to move into evidence Exhibit  
10 129, pages 1 through 3 of that exhibit.

11          THE COURT: You're going to have to keep your voice  
12 up.

13          MS. CLEMENT: Oh, I'm sorry. I'm sorry. Excuse me.

14          At this time, the plaintiffs would seek to move in  
15 Exhibit 129, pages 1 through 3 of that exhibit.

16          MR. REID: No objection, your Honor.

17          THE COURT: 129? Were we looking at that, or is  
18 this something different?

19          MS. CLEMENT: We were looking at it yesterday.  
20 Sorry, your Honor.

21          THE COURT: Can I get 129, please.

22          (Pause.)

23          All right. 129, pages 1 through 3 are admitted.

24          **(Joint Exhibit Number 129, pages 1 through 3, was**  
25 **received into evidence.)**

26          MS. CLEMENT: Thank you.

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TESTIMONY OF

BUDGIE AMPARO, a witness called pursuant to 776 of the  
Evidence Code by the Plaintiffs:

RECROSS-EXAMINATION (continued)

BY LESLIE A. CLEMENT, Attorney at Law, Counsel on behalf of  
the Plaintiffs:

Q. Now, Mr. Amparo, you've never actually done a  
comprehensive process review at Emeritus since you've been  
with the company, for Emerald Hills, correct?

A. No. (Coughing.) Excuse me.

Q. I think we might have gotten a double negative  
there.

Have you ever done a comprehensive process review  
for Emerald Hills?

A. I haven't.

Q. You've never done a comprehensive process review, or  
CPR, for California Emeritus, correct?

A. I can't remember. I participated -- I participated  
in a couple, I just couldn't remember when.

Q. In California?

A. In California.

Q. In Region One?

A. I don't know if it's in Region One.

Q. So before we had our lunch break we were talking  
about policies and we moved into evidence, Exhibit Number  
118. And I'd like to just go through just a few of those  
little policies with you.

If we can turn to Exhibit 118, sir.

1 MS. CLEMENT: And in the PDF file, it's page 73.

2 And for the Court and the witness, it would be the  
3 73rd page -- sorry, your Honor. It's chapter three, page  
4 21. So on the bottom right-hand corner it says, 3, hyphen,  
5 21.

6 THE WITNESS: Got it.

7 Q. (By MS. CLEMENT) You're there?

8 A. Yes.

9 THE COURT: Okay. I'm with you.

10 MS. CLEMENT: Thank you, your Honor.

11 Q. (By MS. CLEMENT) Alert charting. This is when the  
12 facility is required to do more frequent charting in the  
13 resident's record, correct?

14 A. No.

15 Q. Alert charting should be initiated when there's a  
16 new admission to the resident, according to Emeritus'  
17 policies, true?

18 A. Yes.

19 Q. And whenever there's an incident that requires an  
20 incident report, correct?

21 A. Yes.

22 Q. Such as, a fall, when a resident goes to the  
23 hospital?

24 A. Yes.

25 Q. And when there's a significant change in the  
26 resident's condition?

27 A. Yes.

28 Q. Like when a resident goes from walking to not



1 walking?

2 A. Right.

3 Can I correct myself? I thought that was care  
4 alert, and it's alert charting. So I -- I would know what  
5 I said about the frequency of charting. I misread it. I'm  
6 sorry.

7 Q. So, you know as a nurse that when a resident has a  
8 change in their condition, or they're a new admission, or  
9 they're a readmission to the facility, there needs to be  
10 alert charting. And typically that's for at least three  
11 days after the event or until that event has resolved.

12 A. That is true.

13 Q. So, for example, if a resident gets a bedsore and  
14 that's a new event, that would require alert charting?

15 A. Yes.

16 Q. And that would require that the facility nurse or a  
17 licensed designee chart in the resident's permanent record  
18 every day what's going on with regard to that particular  
19 problem with the resident, such as a bedsore?

20 A. Yes.

21 Q. And all sorts of skin treatment, whenever it's  
22 initiated or changed, that has to be charted, correct?

23 A. Yes.

24 Q. And this alert charting is supposed to be done  
25 routinely, correct?

26 A. Yes.

27 Q. And that wellness record, that's where we have  
28 progress notes that the nurse keeps, and that's part of the

1 permanent record of the medicals of the resident's record,  
2 correct?

3 A. That's correct.

4 Q. And when you reviewed Mrs. Boice's record, you  
5 didn't find any documentation by the nurse or anyone else  
6 of alert charting, correct?

7 A. Not that I remember.

8 MS. CLEMENT: A PDF, page 183.

9 Your Honor and the witness, it's chapter eight,  
10 hyphen, four. Page four. "Wellness Notes."

11 Q. (By MS. CLEMENT) A wellness note is just like a  
12 progress note is for a nurse, correct?

13 A. Yes.

14 Q. And that note is part of the permanent record of the  
15 resident, correct?

16 A. Yes.

17 Q. And that should be done whenever there's a change in  
18 the physical condition of the resident?

19 A. Yes.

20 Q. An unusual event or occurrence, such as a fall?

21 A. Yes.

22 Q. Bedsore?

23 A. Yes.

24 Q. Increasing pain?

25 A. Yes.

26 Q. A resident who can't bear weight?

27 A. Yes.

28 Q. A resident who can't walk?

1 A. Yes.

2 Q. A resident refuses treatment?

3 A. (No audible response.)

4 Q. (Indicating.)

5 A. Yes.

6 Q. And only staff that are trained in documentation

7 principles and allowable by state laws and regulations may

8 document in this record, correct?

9 A. Yes.

10 Q. Next is next is the medication occurrence.

11 MS. CLEMENT: This is a PDF, page 163.

12 Your Honor and the witness, chapter five, pages six

13 and seven.

14 Q. (By MS. CLEMENT) This is -- I'm sorry.

15 Are you there, Mr. Amparo?

16 A. You said chapter five, pages six and seven?

17 Q. Yes, sir.

18 THE COURT: No.

19 THE WITNESS: What I have here is "Resident Events."

20 MS. CLEMENT: Okay. Erik, can you help me out on

21 that?

22 163, 7-22.

23 MS. CLEMENT: Oh, it's chapter seven?

24 Erik Yeah.

25 MS. CLEMENT: Oh, I'm sorry, your Honor.

26 Chapter 7, page 22. I apologize.

27 THE COURT: Okay. So that's page 163 of the

28 exhibit.

1 MS. CLEMENT: Thank you, Judge.

2 THE COURT: All right.

3 MS. CLEMENT: Oh, so then they -- okay. Then I'll  
4 just use those numbers. Because I'm looking at it  
5 electronically. Sorry.

6 Okay. Erik can we just start with this, please,  
7 only.

8 Q. (By MS. CLEMENT) Okay. So this -- this is the  
9 policy of Emeritus when there's a medication error,  
10 correct?

11 A. Yes.

12 Q. And a medication error includes when a resident  
13 isn't given their medication, correct?

14 A. Yes.

15 Q. And that there's supposed to be -- when there's --

16 THE COURT REPORTER: I need you to repeat it,  
17 Counsel.

18 MS. CLEMENT: Yes.

19 Q. (By MS. CLEMENT) When there's a medication error,  
20 they're supposed to be immediately documented on the  
21 medication occurrence form?

22 A. Yes.

23 Q. And when there's a medication error, the procedure  
24 is that the nurse is notified, who, in turn, the nurse is  
25 supposed to notify the physician, correct?

26 A. Yes.

27 Q. And the resident or their responsible party, the  
28 family, is also supposed to be notified?

1 A. Yes.

2 Q. And the executive director is supposed to be  
3 notified?

4 A. Yes.

5 Q. And there's supposed to be copies faxed to these  
6 individuals, recording this notification that there's been  
7 a medication error, correct? There's supposed to be  
8 documentation faxed to the physician, notifying them of  
9 these errors, correct?

10 A. Yes.

11 Q. And that's also supposed to be a permanent part of  
12 the record, correct? A communication to the physician is a  
13 permanent part of the record?

14 A. Yes.

15 Q. Whenever you talk to the doctor, you're supposed to  
16 make a note in the record?

17 A. Yes.

18 Q. When you talk to the family about a problem, like a  
19 medication error, you're supposed to record that in the  
20 record?

21 MR. REID: Well, it's vague, your Honor, as phrased.

22 Q. (By MS. CLEMENT) When you speak to the physician  
23 about --

24 MS. CLEMENT: Excuse me. I'm sorry, your Honor. I  
25 apologize.

26 THE COURT: It's not vague. The objection is  
27 overruled.

28 The question was about when you talk to the family

1 about a problem.

2 Q. (By MS. CLEMENT) When you speak to the family about  
3 a problem, like a medication error, you're supposed to  
4 document that in the record?

5 A. Yes.

6 MS. CLEMENT: Page 85, your Honor, and the witness.

7 Q. (By MS. CLEMENT) This is regarding monitoring the  
8 residents' skin, correct?

9 A. Yes.

10 Q. Because unlike in a hotel, in Emeritus' assisted  
11 living facilities, they're actually supposed to be looking  
12 at the residents' skin?

13 A. I'm sorry. Could you repeat the question.

14 Q. Well, in a hotel, you don't expect the staff to come  
15 in and check your skin, correct?

16 A. No, I don't.

17 Q. But in an assisted living facility that Emeritus  
18 operates, like Auburn Emerald Hills, the staff are expected  
19 to check the residents' skin?

20 A. Yes.

21 Q. And that's because the residents are frail and  
22 elderly and their skin -- they're at risk for skin  
23 breakdown?

24 A. Some of them, yes.

25 Q. And the policy is to prevent skin breakdown,  
26 correct?

27 A. Yes.

28 Q. And in order to prevent skin breakdown, the staff

1 have to be trained about the risks of skin breakdown?

2 A. Yes.

3 Q. And they have to be trained on how to prevent  
4 bedsores from happening, correct?

5 A. Yes.

6 Q. And you've already testified that you don't know if  
7 there's any such training that takes place at Emeritus,  
8 correct?

9 A. At Emeritus? The whole company Emeritus?

10 Q. You don't know, in California, if any of the staff  
11 get trained on skin breakdown, do you?

12 A. Not that I remember.

13 Q. So the prevention is to handle the residents with a  
14 soft touch, true?

15 A. Yes.

16 Q. To dry their skin thoroughly after bathing?

17 A. Yes.

18 Q. This is the staff that's drying the resident's skin,  
19 correct?

20 A. The staff, or you could also remind a resident who  
21 is able to still manage his or her care.

22 Q. Let me understand something. Are these policies and  
23 procedures read to the residents?

24 A. No.

25 Q. Do the family members get copies of these policies  
26 and procedures and told that they're responsible for these  
27 things?

28 A. No. But I remember there's something in the

1 resident agreement that would talk about the importance  
2 of -- of keeping good skin condition and the risks that  
3 could probably occur as a result of them aging in place or  
4 an existing medical condition.

5 Q. Is that something that you helped create with the  
6 legal counsel for Emeritus? That document you're talking  
7 about, the statement of informed risk, or something like  
8 that?

9 A. I took part -- I took part of it. I just couldn't  
10 remember if legal or administration. But I did took part.

11 Q. Yeah. Don't you remember testifying that that was  
12 you and the legal department that put that together?

13 MR. REID: Objection, your Honor. It assumes facts  
14 not established.

15 THE COURT: Sustained.

16 Q. (By MS. CLEMENT) The staff are supposed to pay  
17 close attention to skin folds and tender areas of the  
18 residents' skin?

19 A. Yes.

20 Q. And use moisturizers daily on the residents after  
21 bathing?

22 A. Yes.

23 Q. So the residents are supposed to be bathed every day  
24 and have moisturizers placed on their skin by the staff?

25 A. That is granting residents prefer that they be  
26 bathed daily.

27 Q. And they're supposed to manage incontinence,  
28 correct?



1 A. Yes.

2 Q. So that means a resident who is incontinent needs to  
3 be on a toileting schedule, so you take them to the toilet  
4 so that they can go regularly, correct?

5 A. If they're able to participate, yes.

6 Q. So if someone who comes into your facility is  
7 continent but needs reminders and physical help to go to  
8 the restroom, the staff needs to have a toileting schedule  
9 as part of their care plan to make sure that that resident  
10 doesn't lose their ability to remain continent?

11 A. Yes, that's one of them.

12 Q. And you -- really, what it says right here,  
13 "preventing incontinence with a toileting program, cues and  
14 other assistance," right?

15 A. Yes.

16 Q. And if a resident does have an incontinent episode,  
17 you want to clean them up right away?

18 A. Yes.

19 Q. Because you don't want a resident with frail skin to  
20 be sitting in a diaper full of stool or urine, correct?

21 A. Yes.

22 Q. Just like a baby. You don't want to do that, right?

23 A. Yes.

24 Q. Because their skin will break down, right?

25 A. Yes.

26 Q. And it's also a dignity issue, too, isn't it?

27 A. Yes.

28 Q. And the next thing you're supposed to do is to

1 remind and assist residents who are less mobile to change  
2 position frequently?

3 A. Yes.

4 Q. And that's because you don't want them to get  
5 pressure sores or bedsores, correct?

6 A. Yes.

7 Q. Because the reason they call them pressure ulcers is  
8 because they're caused primarily from pressure?

9 A. Yes.

10 Q. So that takes staff effort to be going around and  
11 helping all these residents who are less than mobile, to  
12 assist them to stand and change their position frequently,  
13 correct?

14 A. Yes.

15 Q. And then you have -- the staff is supposed to  
16 monitor the residents' nutritional and hydration status and  
17 provide adequate food and fluids?

18 A. Yes.

19 Q. So the staff need to be trained about that, correct?

20 A. Correct.

21 Q. They need to be trained to know how to care for  
22 residents who don't know or can't remember how to get  
23 in adequate food and fluids?

24 A. Yes.

25 Q. And if there's any bruises, rashes, or sores,  
26 they're supposed to report that to the healthcare provider?

27 A. Yes.

28 Q. So reddened areas, skin discoloration, blisters, dry

1 skin, scratches, all these things you're supposed to  
2 report?

3 A. Yes.

4 Q. Because before you have a pressure ulcer that's a  
5 big hole in someone's body, it starts with a reddened area,  
6 correct?

7 A. That is correct.

8 Q. And you're expecting your staff to be monitoring  
9 this regularly, like daily, on these elderly people,  
10 correct?

11 A. Yes.

12 Q. Now, staffing.

13 MS. CLEMENT: This, your Honor, is page 292.

14 Q. (By MS. CLEMENT) Can everyone read that? No?

15 JUROR NUMBER TEN: A little difficult.

16 MS. CLEMENT: A little difficult?

17 Can you bring that up, please. Thank you, Erik.

18 Q. (By MS. CLEMENT) So this is Emeritus' policy on  
19 staffing, right?

20 A. Yes.

21 Q. And it talks about actual staffing ratios, correct?

22 A. Yes.

23 Q. And a ratio means how -- like one caregiver to X  
24 number of residents, correct? That's a ratio?

25 A. That's a ratio, yes.

26 Q. So one to seventeen, one to twenty, one to five,  
27 that would be -- the one would be the number of the staff  
28 person, and the five or the seventeen or the twenty would

1 be the residents, correct?

2 A. Yes.

3 Q. So the Emeritus policy is that staffing is going to  
4 be sufficient to maintain a safe community?

5 A. Yes.

6 Q. Is that just sometimes?

7 A. All the time.

8 Q. Every day, every shift, every hour, safe community?

9 A. Yes.

10 Q. And to make sure it's sufficient to assist with the  
11 residents with their medications as appropriate?

12 A. Yes.

13 Q. That's every day?

14 A. Yes.

15 Q. And assist them with the meal service to make sure  
16 they get their meals and they're helped with eating?

17 A. Yes.

18 Q. And so you don't want your residents, because you're  
19 short-staffed, to have to wait an hour an hour-and-a-half  
20 in the dining room before they food comes out, right?

21 A. No, we do not.

22 Q. And you need to have enough staff so that they can  
23 do the laundry of the residents, too, correct?

24 A. Yes.

25 Q. And you want to make sure that each resident  
26 receives the kind and amount of supervision and care  
27 required to meet their needs?

28 A. Yes.

1 Q. And to make sure that there's enough staff to assure  
2 a safe evacuation of the community. That's the assisted  
3 living facility, right?

4 A. Yes.

5 Q. So if there's any kind of an emergency, fire, or  
6 somebody -- a bad guy comes into the building, you've got  
7 to evacuate, there's -- something toxic happens, you need  
8 to be able to get those people out, right?

9 A. Yes.

10 Q. And you have to have enough staff to do that?

11 A. Yes.

12 Q. And the policy is also to have staff immediately  
13 available when a resident requests or requires assistance?

14 A. Yes.

15 Q. And what does "immediately available" mean?

16 A. Like what's considered reasonable.

17 Q. So is it just the plain English version of the word  
18 "immediately"? Like right now?

19 A. It's really hard to quantify it. It's based on the  
20 individual and what's -- what's realistic.

21 Q. Realistic for the resident's care needs or realistic  
22 for Emeritus?

23 A. Realistic based on the resident care needs.

24 Q. And when we go back up to the very top of this  
25 particular policy, the ratios are supposed to be based on  
26 the needs of the residents as identified in their care  
27 plans, correct?

28 A. Yes.

1 Q. Now, how are you going to know what the residents'  
2 needs are if you don't have care plans for all the  
3 residents?

4 A. A care plan is one aspect of making that  
5 determination. It's not the sole factor that should be  
6 considered.

7 Q. Does the policy mention anything else besides the  
8 care plans as to what the residents' needs are going to be  
9 determined by?

10 A. No. But the way you derive at a care plan is by  
11 evaluating or assessing the residents, talking to the  
12 family members, talking to the staff, and all those have to  
13 be factored in to make that determination.

14 Q. And every resident at Emeritus is supposed to have a  
15 care plan, right?

16 A. Yes.

17 Q. And that care plan is supposed to be developed  
18 before they move in, with the involvement of the family,  
19 correct?

20 A. Initial, yes.

21 Q. And then whenever there's a change in condition,  
22 it's supposed to be updated, correct?

23 A. Correct.

24 Q. And that's a standard of care, correct?

25 A. Yes.

26 Q. And Mrs. Boice didn't have any care plan when she  
27 moved into the facility, or before she moved in, correct?

28 A. As far as I remember, there was -- there was a care

1 plan or a plan of care.

2 Q. Is that your sworn testimony, that there was a care  
3 plan before Mrs. Boice moved in?

4 A. I'm trying to remember. I thought I remembered  
5 seeing one.

6 Q. Signed by her family?

7 A. I couldn't remember.

8 Q. Signed by anybody at all?

9 A. Again, it's been a while since I reviewed it. I  
10 couldn't remember. I actually need to see the actual  
11 document.

12 Q. Well, there isn't one. So it would be wasting my  
13 time to try to show it to you.

14 MR. REID: Your Honor, that's argumentative.

15 THE COURT: It is. We'll strike that.

16 MS. CLEMENT: Next, please.

17 Is this 60? Yes.

18 Page 60, your Honor.

19 Q. (By MS. CLEMENT) Determining level of care and  
20 services. This is a very important policy, correct?

21 A. Yes, it is.

22 Q. Because you have to -- to figure out how much staff  
23 you need in the building, you have to determine the level  
24 of care and services for each resident, true?

25 A. Yes, it's one of 'em.

26 Q. And you said something earlier about the law being  
27 the standard of care. And I think you said sometimes it  
28 just depends, about following the regulations.

1 Do you remember that?

2 A. Yes.

3 Q. And this policy says: Specific requirements  
4 outlined by the state law will be fired -- excuse me, will  
5 be followed.

6 A. Yes.

7 Q. Okay. It's not equivocal, is it?

8 A. No.

9 MS. CLEMENT: 129, your Honor.

10 Q. (By MS. CLEMENT) I'm going to turn your attention  
11 back to the 602 forms, the physicians' reports.

12 MS. CLEMENT: And can you bring up the "allegations"  
13 section, please.

14 Q. (By MS. CLEMENT) Now, you told us that you were --  
15 you got copies of the surveys and investigation reports  
16 from the Department of Social Services and you monitor  
17 those, correct?

18 A. Yes.

19 Q. And this is about an investigation that the State  
20 did in the Tracy facility, which is Region Two for  
21 California.

22 Is that true?

23 A. I believe so, yes.

24 Q. And the allegation that the State was investigating  
25 was that the facility was accepting residents without the  
26 license form 602, the physician's report?

27 A. Yes.

28 Q. And the corporate office was directing the facility



1 to admit residents without the licensing 602, correct?

2 A. Yes.

3 Q. And isn't it true, Mr. Amparo, that you were the  
4 person at corporate who was telling the sales and marketing  
5 staff and the executive directors to go ahead and admit  
6 residents without the 602's?

7 A. No.

8 Q. Isn't it true, Mr. Amparo, that you specifically  
9 stated, "I want heads in the beds. I don't care about the  
10 602's. I want you to fill the buildings"?

11 A. No.

12 Q. And this was in the fall of 2008 when you made those  
13 statements on a conference call, true?

14 A. No.

15 Q. And that was at the same time that your Chief  
16 Operating Officer Justin Hutchens was sending out messages  
17 to California, Emeritus' team, telling them that the  
18 urgent -- the urgent focus of the company was sales and  
19 filling the buildings, occupancy?

20 A. No.

21 Q. In fact, since you've been at Emeritus that has been  
22 the urgent focus of this company and you, as one of the  
23 chief executives in this company, have been part of that  
24 focus?

25 A. No.

26 MS. CLEMENT: Can you bring up the first paragraph  
27 of the investigative findings, please.

28 Can everyone read that? Is it big enough?

1 Q. (By MS. CLEMENT) An LPA, that means the Licensed  
2 Program Analyst?

3 A. Yes.

4 Q. And that's the State employee investigator?

5 A. Yes.

6 Q. And on a visit in December of 2008, a licensed  
7 program analyst reviewed seven files at random of recently  
8 admitted residents to verify the presence of a physician's  
9 report?

10 A. Yes.

11 Q. And initially, the facility was only able to provide  
12 four of the documents, correct?

13 A. Yes.

14 Q. And several days later, the facility provided the  
15 missing documents?

16 A. Yes.

17 Q. And at least two of them reflected completion dates  
18 after the residents had been admitted?

19 A. Could you direct -- I'm -- direct where that is?  
20 I'm not following.

21 Q. It's the last sentence of investigative findings.

22 MS. CLEMENT: Go down. Sorry. You're on the wrong  
23 place. Okay. Thank you for highlighting that.

24 I think it's gotten smaller. Can we get a little  
25 bigger? No, it hasn't? It's just my eyesight.

26 THE WITNESS: Yes.

27 MS. CLEMENT: Now you can move it down, Erik,  
28 please.

1 Q. (By MS. CLEMENT) And then the licensed program  
2 analyst interviewed staff who were present at a meeting  
3 during which a corporate representative approved the  
4 practice of admitting someone without a physician's report?

5 A. Yes.

6 Q. And you know who that corporate representative was,  
7 correct?

8 A. No.

9 Q. And that corporate representative was the Sales and  
10 Marketing Vice President for California, Angela Neale,  
11 correct?

12 A. I don't know that.

13 Q. Wasn't Miss Neale also on that conference call with  
14 you with the other sales and marketing for California team?

15 A. I am not sure.

16 Q. And the licensed programming analyst found that the  
17 participants at the meeting were told that the  
18 aforementioned practices were not to be done  
19 indiscriminately or on a regular basis, but rather on a  
20 case-by-case basis, and facilities could not make  
21 independent decisions to admit someone without the LIC 602.  
22 Corporate would need to be contacted and given a detailed  
23 explanation about the circumstances pertaining to the  
24 admission.

25 Do you see that?

26 A. Yes.

27 Q. And you see on the second page that the licensed  
28 programming analyst found that the complaint was

1 substantiated?

2 A. Yes.

3 MS. CLEMENT: Thank you.

4 Q. (By MS. CLEMENT) Now, Mr. Amparo, speaking about  
5 this issue of mandated reporter and things that need to be  
6 reported to the State, would you agree that neglect --  
7 neglecting a resident is something that needs to be  
8 reported to the State?

9 A. Yes.

10 Q. And would you agree that pressure ulcers are  
11 something that can give rise to a -- at the very least, a  
12 suspicion of neglect?

13 A. The possibility, yes.

14 Q. And that's this criteria. If there's a suspicion of  
15 neglect, you must report?

16 A. That is correct.

17 Q. And how about locking a resident in their room?  
18 Would that amount to elder abuse or neglect that you needed  
19 to report to the State?

20 A. Yes.

21 Q. How about leaving a resident in a room that was  
22 covered with feces and urine and locking them in that room?  
23 Would that be something you would need to report to the  
24 State?

25 A. Yes.

26 Q. I want to just move on to a different topic.

27 We've talked a lot about nurses and not really  
28 needing nurses in your facility.

1           That's your position, correct?

2   A.       (No audible response.)

3   Q.       Your position is Emeritus doesn't need to have  
4   nurses in their facilities, correct?

5   A.       I don't think I said that we don't need them. I  
6   think what I was referring to earlier was that if there --  
7   if I remember the question, if one day somebody at the  
8   corporate office decides to layoff all the nurses, would it  
9   be reasonable to believe that we're still going to be able  
10   to provide the general services that we provide. And my  
11   answer was I believe that -- my answer was -- I said that  
12   would be very difficult. And I said that should somebody  
13   decide on that, that overall we're still going to be able  
14   to provide the general services but the quality wouldn't be  
15   the same.

16   Q.       Okay. Now, Emeritus in its marketing materials  
17   tells families that they have nurses, full-time nurses,  
18   correct?

19   A.       I think I need to see the marketing materials at one  
20   period of time. Because there has been a lot of changes in  
21   those marketing materials.

22   Q.       Okay. Well, would you agree if a family was told  
23   when they were considering an Emeritus facility that they  
24   had a full-time nurse that Emeritus should honor that  
25   promise and have a full-time nurse?

26   A.       Well, I don't know what they're being told. I'm not  
27   there to witness that. So I'm not going to be able to say  
28   whether they said it or not.

1 Q. That wasn't my question.

2 A. I'm sorry.

3 Q. Okay. Do you believe that if Emeritus tells a  
4 family that they are going to have a full-time nurse to  
5 watch their parent and help care for them that Emeritus  
6 needs to honor that promise?

7 A. Yes.

8 Q. Now, I want to get into this distinction between  
9 assisting with medications and administering medications.

10 A. Okay.

11 Q. Med techs, it's your understanding, can assist with  
12 medications?

13 MR. REID: I think this exceeds the scope of my  
14 examination. I don't recall having this discussion.

15 MS. CLEMENT: You most certainly did. I took notes  
16 on it.

17 THE COURT: I don't recall him going into that.

18 Do you have some notes to that effect?

19 MS. CLEMENT: I did have notes about what the nurses  
20 could and couldn't -- and what the med techs could and  
21 couldn't do.

22 THE COURT: I did have that when you were  
23 questioning him.

24 How many questions do you have in this area?

25 MS. CLEMENT: Three.

26 THE COURT: Okay. For those, I'll allow you to  
27 reopen.

28 MS. CLEMENT: Thank you, your Honor.

1 Q. (By MS. CLEMENT) Med techs cannot administer  
2 medications, true?

3 (Pause.)

4 THE WITNESS: Yes, they can assist.

5 Q. (By MS. CLEMENT) I don't know that that was a clear  
6 answer to my question.

7 A. Administer, no. Because I remember -- my  
8 understanding of administration is more of a licensed  
9 nurse.

10 Q. So in the Dementia Unit, where the residents cannot  
11 tell whether they want a medication or not, whether they  
12 can choose to refuse a medication or not, that is  
13 technically administration of medication, correct?

14 MR. REID: Your Honor, that was asked and answered  
15 in her prior examination and beyond the scope.

16 THE COURT: It is. We're going back over ground  
17 again, Counsel.

18 What's different? Is there another question?

19 MS. CLEMENT: Yes.

20 THE COURT: Ask it.

21 MS. CLEMENT: I'll move on.

22 THE COURT: Thank you.

23 MS. CLEMENT: You're welcome.

24 Q. (By MS. CLEMENT) Going back to this Exhibit 110,  
25 the communication between you and Miss Hulse.

26 MS. CLEMENT: Has this been moved in?

27 MR. REID: Yes.

28 MS. CLEMENT: Can you put that up, please. I want

1 this part (indicating).

2 THE COURT: Did we admit this?

3 MS. CLEMENT: This was moved into evidence.

4 MR. REID: Yes.

5 MS. CLEMENT: Yesterday, your Honor.

6 THE COURT: Okay. Go ahead. Thank you.

7 Q. (By MS. CLEMENT) Okay. So the reason it's not  
8 blown up yet is because I want to ask you a question about  
9 it.

10 The top of this e-mail was deleted, Mr. Amparo,  
11 correct? That was your reply to Miss Hulse?

12 A. Wait. You have two questions. First you said --

13 Q. Okay. Let me ask you this: This page, you can see  
14 that there -- there was an e-mail -- a reply. You did a  
15 reply to Miss Hulse from this e-mail of November 19th  
16 regarding her investigation into the family's concerns  
17 about medication administration, where the family -- you  
18 wrote a letter to the family on November 19th, about the  
19 family member who died and you wrote to them about that?

20 A. Not exclusively on that.

21 Q. That's not my question. I'm just trying to reorient  
22 you to what we're looking at here.

23 This is Lisa Hulse's e-mail to you, where she wrote  
24 to you after you requested she -- you go and do an  
25 investigation into this family member's concerns?

26 A. Yes.

27 Q. And you wrote a reply to her, correct?

28 A. (No audible response.)



1 Q. It was at the top of this page, sir, and you deleted  
2 it, correct?

3 A. No.

4 Q. And that's your sworn testimony, sir?

5 A. Yes.

6 Q. And today on direct examination by Mr. Reid, you  
7 changed your testimony from your deposition; is that  
8 correct?

9 A. Yes.

10 MR. REID: It lacks -- well --

11 THE COURT: It's a little broad.

12 MS. CLEMENT: Okay.

13 THE COURT: Changed his testimony about what?

14 MS. CLEMENT: I'm sorry, your Honor. Let me  
15 rephrase.

16 And can you bring this up to make it bigger, please.  
17 Particularly, the second bullet point, first bullet under  
18 that.

19 Q. (By MS. CLEMENT) When I questioned you in your  
20 deposition extensively about this e-mail exchange, you told  
21 me that you did not know that this was anything other than  
22 the communication between you and Miss Hulse about the  
23 investigation you asked her to do into a particular  
24 resident, who you wrote to their family and promised that  
25 there would be an intensive in-servicing and care  
26 planning -- excuse me, in-servicing or training of the  
27 employees on medication administration, correct?

28 A. I couldn't exactly remember what I said, but I --

1 during that three-day deposition that we had -- but I  
2 remember -- I don't know if I'm allowed. If we could show  
3 the whole document and go to the second to the last bullet  
4 of this document.

5 Q. Okay. I just want to stick with the answer to my  
6 question. And I'm going to follow up with that.

7 You weren't deposed three days in a row, correct?

8 A. No.

9 Q. So I came up there and I left, and I had to come  
10 back weeks later and left, and months later and came back.

11 Correct?

12 A. Yes.

13 Q. And each time you got a letter from the court  
14 reporter who told you that you had the right and  
15 opportunity to change your testimony and to provide that --  
16 those changes to her, correct?

17 A. I'm sorry. I didn't follow your question.

18 Q. Okay. So after each deposition, you received a copy  
19 of a letter from the court reporter, the official court  
20 reporter who took down everything that was said. Yes?

21 A. Yes.

22 Q. In that letter, she told you that your transcript --  
23 transcript was ready, you could review it, you could make  
24 changes to it, and turn those changes back in to her?

25 A. Yes.

26 Q. And at the beginning of each of your deposition  
27 sessions, I explained that to you as well?

28 A. Yes.

1 Q. And I explained to you that you were under penalty  
2 of perjury?

3 A. Yes.

4 Q. And on one day of your deposition you were produced  
5 as the person most knowledgeable on behalf of Emeritus on a  
6 number of topics which included things that included this  
7 letter, correct, this e-mail?

8 A. That is correct.

9 Q. And at that time, you never wrote back to the court  
10 reporter to make any changes to your transcript, correct?

11 A. Yes.

12 Q. You never told me about it?

13 A. Yes.

14 MS. CLEMENT: I have no further questions. Thank  
15 you.

16 THE COURT: Can we have the lights.

17 MR. REID: I do have just a little bit more, your  
18 Honor. Thank you.

19 THE COURT: Go ahead.

20 FURTHER REDIRECT EXAMINATION

21 BY BRYAN R. REID, Attorney at Law, Counsel on behalf of the  
22 Defendants:

23 Q. Now we do the musical chairs here, Mr. Amparo.

24 A. I'm sorry.

25 Q. Okay. Well, I'll try to just go in order. Because  
26 when I sat down, you were asked a pretty pointed question  
27 about your love of \$700,000. And you said, No.

28 Do you make \$700,000 a year?

1 A. Absolutely not.

2 Q. You make a good salary?

3 A. Yes, I do.

4 Q. And do you mind sharing with the jury what you earn?

5 A. Sure. Um, it's somewhere around -- and, again, this  
6 is now around 250. And don't get me wrong, I think the  
7 word "love" was -- I just didn't connect with that. If the  
8 question is, "Do I appreciate it?" "Am I privileged that  
9 I'm getting that salary?" Absolutely. Do I put my heart  
10 and soul to earn that salary? Yes. I have no qualms about  
11 being on-call 24 hours a day, seven days a week. That's  
12 part of my job. So that's why I said I didn't love it.  
13 That's basically why I said no.

14 Q. Okay. You're on the road a lot in your job?

15 A. A lot.

16 Q. There was also some inference that you got paid a  
17 tremendous amount of money to sell your home in the -- in  
18 San Jose?

19 A. Yes.

20 Q. And what's the truth about what happened with your  
21 home so that you could move to Seattle?

22 A. I think part of my comment about saying it was  
23 difficult for the move, aside from the fact that I prefer,  
24 you know, California because this is where I've lived  
25 for most of my life, the time of the required move as a  
26 result of the merger was the time that the economy tanked.  
27 The area where I live in San Jose, it's like evergreen --  
28 evergreen area. I don't know if you guys are familiar with

1 that area. That was one of the most heavily hit in terms  
2 of real estate.

3 So I had placed that home on the market for a very  
4 long time. And, unfortunately, it didn't sell. And I was  
5 already in Seattle, so the company have decided to purchase  
6 the home. But as a result of that purchase, I had to put  
7 out a huge amount of money out of my pocket because it was  
8 under water.

9 Q. And then you were asked if you -- you were asked  
10 about coming in here to offer opinions about compliance  
11 with the standard of care. And you recall, you have not  
12 looked at these records in a long time, correct?

13 A. Yeah. That's true.

14 Q. Now, do you happen to remember in this trial who  
15 asked you if you had an opinion about the standard of care  
16 first?

17 A. I couldn't remember.

18 Q. Okay. Do you have a recollection of Ms. Clement,  
19 when she first called you to the stand, asking you about  
20 your opinions about the standard of care?

21 A. Yes.

22 Q. So did you come in here with the intent to offer  
23 opinions about the standard of care?

24 MS. CLEMENT: Leading.

25 THE COURT: Overruled.

26 THE WITNESS: No.

27 Q. (By MR. REID) Now, I want to look at -- next on my  
28 list is Exhibit 9 -- 89, pages six and seven, which I think

1 were admitted into evidence.

2 MR. REID: With the Court's permission, if we could  
3 put those up?

4 THE COURT: All right.

5 MR. REID: Page six. Are you plugged in?

6 It takes a little while to warm up, like some of us.  
7 Uh-oh.

8 THE COURT: That's okay.

9 Q. (By MR. REID) This, recall, Mr. Amparo, was the job  
10 description for the resident care director.

11 MR. REID: And if you could pull up the "purpose"  
12 section.

13 Q. (By MR. REID) Miss Clement asked you a few  
14 questions about this I think before lunch.

15 And let's see if I can -- sometimes this works and  
16 sometimes it doesn't. There we go.

17 She was asking you about this notion of "maintain  
18 excellent services." And then she also asked you about  
19 high occupancy and that being one of the -- one of the  
20 roles of a resident care director.

21 And I just want to ask you, does a good resident  
22 care director play a role in maintaining good occupancy in  
23 a community?

24 A. Absolutely.

25 Q. And how do they do that?

26 A. By providing good care and services to our residents  
27 and being part of providing customer satisfaction to, you  
28 know, the residents, staffs, and their -- the residents'

1 loved ones.

2 Q. How does providing good services to the residents  
3 result in high occupancy in the building?

4 A. Our company believes that if we thrive in providing  
5 excellent care, strive to provide good excellent care, that  
6 the rest of the other metrics would follow.

7 So, in short, if -- if the care is not where it  
8 needed to be, then, you know, all these other metrics,  
9 financials and occupancy, is basically not going to happen.

10 Q. So -- okay. So if the nurse isn't doing a good job  
11 and isn't making sure good services are delivered, then  
12 it's going to be much more difficult to --

13 MS. CLEMENT: Leading.

14 MR. REID: I apologize.

15 Q. (By MR. REID) What happens if the nurse isn't doing  
16 a good job and isn't motivating the staff to deliver  
17 excellent services?

18 A. There are many reasons for a move-out. One of the  
19 reasons would be customer satisfaction related to care  
20 services. So if they are not going to pay attention on  
21 that indicator, as being the nurse of the community, that  
22 definitely would create impact on the total occupancy of  
23 the community.

24 Q. Okay. I think I get it. We'll push ahead.

25 MR. REID: You can take that down. Thank you.

26 Q. (By MR. REID) Now, Miss Clement on her  
27 recross-examination asked you whether you reported --

28 THE COURT: Can we have the lights, please.

1 Q. (By MR. REID) -- whether you as a mandated reporter  
2 suspected -- or reported suspected elder neglect in  
3 connection with that Chatsworth incident. And you said,  
4 No.

5 Correct?

6 A. Yes.

7 Q. Why didn't you report it?

8 A. Because those type of instances is something that is  
9 expected of the community to report. We also have to  
10 consider that I was invited by the licensing office,  
11 Department of Social Services, to talk about that matter.

12 Q. When you say you were invited by licensing, what  
13 does that mean?

14 A. I'm sorry. There was a conference that took place  
15 involving the supervisor of the Department of Social  
16 Services, and I was present at that meeting along with  
17 several members of our team, and the discussion was  
18 surrounding -- surrounding -- involving that particular  
19 resident.

20 Q. Okay. So when you knew -- when you found -- when  
21 you found out about the Chatsworth incident, did you have  
22 an understanding that the Department of Social Services  
23 knew about it --

24 A. Yes.

25 Q. -- already?

26 A. Yes.

27 Q. Now, have you ever reported suspected elder abuse as  
28 a mandated reporter?



1 A. When I was a facility staff, I remember reporting  
2 them. At my capacity right now, as an officer of the  
3 company, I haven't had, you know, a situation where I had  
4 to report it or a situation that I'm aware of that hadn't  
5 been reported.

6 Q. And I want to be -- I want to be clear about the  
7 mandate of the mandated reporter, because I got a little  
8 confused when you were being asked questions. So when --  
9 when -- based on how the Emeritus staff are trained as  
10 mandated reporters, when they suspect -- suspect neglect,  
11 is it -- what is their obligation?

12 A. Okay. And I apologize if I answered earlier not the  
13 way that was understandable to many, but I'll try to make  
14 it simple. Basically any allegation of abuse or neglect  
15 must be reported to the State. There would be occasions  
16 where staff might report it to the executive director,  
17 there might be occasions that it would be reported through  
18 ethics first, but at the end of the day, regardless as to  
19 where the report came from, it will have to be reported to  
20 the Department of Social Services.

21 Q. Okay. And the staff member that suspected the  
22 neglect, do they have an obligation --

23 MS. CLEMENT: Leading.

24 THE COURT: Sustained.

25 Q. (By MR. REID) Does the staff member who reported  
26 the neglect satisfy their obligation by reporting it to the  
27 executive director --

28 MS. CLEMENT: Leading.

1 THE COURT: I have to hear the rest of this part.

2 MS. CLEMENT: I apologize, your Honor, but...

3 MR. REID: I think I can do it again.

4 Q. (By MR. REID) Does the staff member that suspects  
5 the neglect, by reporting that neglect to, say, the  
6 executive director, have they satisfied their obligation?

7 MS. CLEMENT: Leading.

8 THE COURT: He can answer.

9 THE WITNESS: Yes.

10 Q. (By MR. REID) What if the executive director  
11 doesn't report it to the State?

12 A. It --

13 MS. CLEMENT: Vague.

14 THE COURT: Sustained.

15 Q. (By MR. REID) If the executive director doesn't  
16 report the suspected neglect to the State, is the caregiver  
17 off the hook?

18 MS. CLEMENT: Leading.

19 THE COURT: Overruled.

20 THE WITNESS: No.

21 Q. (By MR. REID) And do you know whether a caregiver  
22 that suspects neglect, who doesn't ensure that it gets  
23 reported to the State, do you know whether they could be  
24 subject to criminal prosecution?

25 MS. CLEMENT: Lacks foundation.

26 THE COURT: He can answer.

27 THE WITNESS: Yes.

28 Q. (By MR. REID) And can they?

1 A. Yes.

2 Q. Then after lunch we've been looking at a lot of -- a  
3 lot of policies in the wellness manual, Exhibit 118.

4 Do you have that in -- you don't have to open it up.  
5 Do you have it in mind, Exhibit 118, the wellness manual?

6 A. Yes.

7 Q. Okay. And that -- how many pages are in that  
8 wellness manual?

9 A. I think two hundred something pages, almost 300.

10 Q. Okay. And now that wellness manual, can you tell  
11 the jury, was that a manual that was just in play at  
12 Emerald Hills in 2008, or was it being used across the  
13 country?

14 A. It was used across the country.

15 Q. And as the head of quality, in your position, do you  
16 know whether the regulatory requirements for assisted  
17 living are the same for each of the states in which you  
18 operate communities?

19 A. They're not. They're not the same.

20 Q. And the policies and procedures, we've talked about  
21 them a lot and your expectations with them. I don't want  
22 to go back over that. But let's -- if we could look at  
23 Number 85. Would you mind looking at page 85 of  
24 Exhibit 118.

25 A. Sure.

26 MR. REID: Is it okay if we put that up, your Honor?

27 THE COURT: Yes.

28 MR. REID: And I'll tell you what, maybe just

1 highlight the top part of it.

2 Q. (By MR. REID) Now -- so this -- Miss Clement went  
3 over this with you, and I'm not going to spend a lot of  
4 time doing it, but this is that policy about monitoring  
5 skin condition, right?

6 A. Yes.

7 Q. All right. Now, is it -- does this policy apply  
8 across the board to every resident of every assisted living  
9 that Emeritus operated in 2000 -- let me strike that and  
10 ask it a different way.

11 Do all -- in 2008, did every resident require  
12 assistance with their showers?

13 MS. CLEMENT: Your Honor, it lacks foundation. It's  
14 speculative.

15 THE COURT: Sustained.

16 Q. (By MR. REID) Do -- as the head of quality services  
17 for Emeritus, do you have a familiarity of the range of  
18 services that the residents of the communities need as of  
19 2008?

20 A. Yes.

21 Q. Okay. And we've talked about there's people that  
22 need a lot of care, there's people that need a little bit  
23 of care.

24 Right?

25 A. Yes. And some independent.

26 Q. Okay. So the question is, would a very independent  
27 resident require assistance with bathing?

28 A. No.

1 Q. Would a resident who has the physical ability and  
2 desire to go out and workout at a gym every day and come  
3 back, would that person require, in 2008, to have their  
4 skin checked by the staff at -- at the community?

5 A. Not necessarily.

6 Q. So in -- using the policies to provide care to the  
7 residents of the community, are the staff required to do  
8 each and every thing that's listed on all 293 pages of the  
9 policy manual?

10 MS. CLEMENT: Leading.

11 THE COURT: It's a question.

12 He can answer.

13 THE WITNESS: No.

14 Q. (By MR. REID) How do they -- what are they trained  
15 to do in terms of applying the policy to each individual  
16 resident?

17 A. They have to look at the policy and follow what  
18 would be applicable based on the individual need of that  
19 particular resident. In short, this is provided as a  
20 guide.

21 Q. All right. Thank you.

22 MR. REID: You can -- if you wouldn't mind getting  
23 the lights for us. Thank you very much.

24 Q. (By MR. REID) Now, we also saw a policy about alert  
25 charting.

26 Do you recall that?

27 A. Yes.

28 Q. All right. And are you -- do you have a familiarity

1 with a concept called "a communication log" in an Emeritus  
2 assisted living community?

3 A. Yes.

4 Q. Okay. And were communication logs being utilized at  
5 Emeritus' California communities in 2008?

6 A. I believe so.

7 Q. And can you tell the jury what a communication log  
8 is.

9 A. A communication log is a log that is utilized by our  
10 staff to communicate with one another regarding care and  
11 services that would be necessary to meet the needs of  
12 residents assigned to that specific individual. It's also  
13 a good tool to use to communicate with other members of the  
14 team, whether it be a housekeeper or dining services staff.  
15 That is available to them as well.

16 Q. Okay. And what -- if you could, could you give the  
17 jury an example of what kinds of information a caregiver  
18 might put in a communication log.

19 MS. CLEMENT: Excuse me, your Honor. Exceeds the  
20 scope.

21 THE COURT: I don't remember her touching on  
22 anything about communications.

23 What does this relate to?

24 MR. REID: This relates to the charting requirements  
25 as she went through on the -- in the policy and procedure.

26 THE COURT: Okay. So you are attempting to show  
27 some other form of compliance? Is that what you are  
28 suggesting?

1 MR. REID: Correct.

2 THE COURT: Okay. Go ahead.

3 THE WITNESS: I'm sorry. I will have to ask you to  
4 repeat the question.

5 MR. REID: Would you -- would it be okay if I asked  
6 the court reporter to read it back, your Honor?

7 THE COURT: Yes.

8 (Record read.)

9 THE WITNESS: It would be similar information that  
10 you will be getting out of a plan of care or a care plan.  
11 For instance, let's say a particular resident wants bathing  
12 twice a week or three times a week, and that resident only  
13 wants it on a specific time of the day. Then that would be  
14 documented there, so it would be a point of reference on  
15 preference of a resident. That's just one example, but  
16 that's kind of one of the purposes of it.

17 Q. (By MR. REID) Okay. What if -- if a caregiver is  
18 taking care of a resident and they don't seem to be feeling  
19 well, is that something that might get put in a care log?

20 A. Absolutely.

21 Q. I mean a communication log. I apologize. I  
22 misspoke.

23 And her -- Emeritus' policies and procedures, which  
24 I won't look for right now, do you have an understanding of  
25 how long those communication logs were maintained?

26 A. Not very long. Because it's just a communication  
27 log that's being used for internal communication.

28 Q. Okay. And does that -- is it entered -- is

1 information entered into that by all three shifts?

2 A. Yes, it's -- it's also being used to -- again, as  
3 I've mentioned earlier, it's a form of a communication  
4 tool. So if I'm the outgoing shift, I could make use of  
5 that communication log to -- to highlight things that are  
6 significant for the day and new things that had happened  
7 involving significant residents.

8 Q. Okay. And then following up on this notion of a  
9 care plan.

10 With your experience as a nurse in different levels  
11 of care, healthcare side and non-healthcare, are you -- do  
12 you have a familiarity with care plans?

13 A. Yes.

14 Q. And do care plans -- do care plans look exactly the  
15 same in an acute hospital as they might look in an assisted  
16 living community?

17 A. No.

18 Q. Tell the jury what the difference -- differences  
19 are, in your experience, between a care plan in an acute  
20 hospital versus one you'd see in an assisted living --

21 MS. CLEMENT: Exceeds the scope, your Honor.

22 THE COURT: Sustained.

23 MR. REID: I'm laying the foundation -- may I  
24 approach, your Honor?

25 THE COURT: Yes.

26 (Whereupon an unreported bench conference was then  
27 had in open court between the Court and counsel.)

28 THE COURT: All right. The objection is sustained.



1 Please rephrase.

2 MR. REID: Yes. Thank you, your Honor.

3 Q. (By MR. REID) Mr. Amparo, could you -- I'd like to  
4 reference -- I believe it's Exhibit 2, page 67. So it  
5 would be in the notebook with Exhibit 2.

6 A. Okay. I have it.

7 **(Joint Exhibit Number 2 was marked for**  
8 **identification.)**

9 MR. REID: Your Honor, I believe there's a  
10 stipulation to admit Exhibit 2 into evidence.

11 MS. CLEMENT: Not at this time.

12 MR. REID: Okay. Then I misspoke.

13 THE COURT: That was -- we never finalized that on  
14 the first five exhibits.

15 MR. REID: Okay.

16 THE COURT: Sir -- whoop. New court attendant.

17 Can I get Exhibit 2 from over there, please. There  
18 are binders. It says: Trial Exhibits 1 through 5,  
19 Volume I. Can I have that, please.

20 Thank you.

21 (Pause.)

22 THE COURT: Okay.

23 (By MR. REID) All right. If you would, just take a  
24 moment, Mr. Amparo, and review that document. I think it's  
25 six pages or so. Could you...

26 A. Seven.

27 Q. Seven pages.

28 And do you recognize Exhibit 2 as being a portion of

1 the records of Joan Boice, from her stay at Emerald Hills?

2 MS. CLEMENT: It lacks foundation.

3 THE COURT: Sustained.

4 Q. (By MR. REID) Mr. Amparo, we know that you did at  
5 one point in time review Mrs. Boice's records from  
6 Emerald Hills, correct?

7 A. Yes.

8 Q. Okay. And you're also familiar, given your role, of  
9 the form and content of the medical records as they're  
10 kept -- or the care records as they're kept for the  
11 residents of the Emeritus communities in California?

12 A. Yes.

13 Q. And do you know that these records are kept in the  
14 ordinary course of business?

15 A. Yes.

16 Q. And do you know that these records are -- the  
17 information is entered by the person making the notes at or  
18 about the time the events occur? Is that consistent with  
19 the policy?

20 MS. CLEMENT: It's leading, your Honor.

21 THE COURT: No. He's laying the foundation for the  
22 objection -- for the exception to the hearsay rule.

23 Go ahead.

24 MR. REID: Thank you, your Honor.

25 Q. (By MR. REID) Pursuant to Emeritus' policy, are the  
26 notes that are entered into the records of the Emeritus  
27 chart to be entered at or about the time that the events  
28 occur?

1 A. Yes.

2 Q. And do you recognize those -- that seven-page  
3 document?

4 A. They look familiar, yes.

5 Q. And what is that seven-page document?

6 A. Well, the first page, the heading, it says,  
7 "The Durable Power of Attorney for Healthcare for Joan  
8 Boice."

9 Q. Okay. So now what I need you to do is to turn to  
10 page 67.

11 A. Okay.

12 Q. All right. Okay. And recount the pages because I  
13 think we were talking about the wrong form. Okay?

14 Is that a ten-page document?

15 MS. CLEMENT: It's leading, your Honor.

16 THE COURT: It's preliminary. Overruled.

17 THE WITNESS: Yes, it's -- page -- it's ten pages.  
18 I'm sorry.

19 Q. (By MR. REID) Okay. And do you recognize that --  
20 that form as a form that Emeritus regularly utilized in  
21 2008 in its communities?

22 A. Yes.

23 Q. And these are records that were kept in the ordinary  
24 course of business?

25 A. Yes.

26 Q. And they were -- and the information was pursuant to  
27 policy entered by the person at or about the time they made  
28 the observations?

1 MS. CLEMENT: It lacks foundation. It's speculation  
2 as to this facility and this witness.

3 THE COURT: Mr. Reid, I assume that the witness is  
4 not the custodian of records.

5 Correct?

6 MR. REID: He's not the custodian of records.

7 THE COURT: So you are attempting to show that he is  
8 otherwise, what?

9 MR. REID: Familiar with the business records of  
10 the -- of his company, regularly reviews records in his  
11 role.

12 THE COURT: Can you establish for me, please,  
13 whether or not he can certify that -- that he has the  
14 authority to certify for the company any and all records  
15 that are produced by the company?

16 MR. REID: I'm certain that he can't do that, your  
17 Honor.

18 THE COURT: Well, I'm not. I'd like to hear it from  
19 him.

20 MR. REID: Okay. Well, I'm not offering him for  
21 that purpose.

22 THE COURT: Okay. Then I sustain her objection as  
23 to foundation.

24 MR. REID: Okay.

25 Q. (By MR. REID) That ten-page document that you were  
26 looking at, sir, when Ms. Clement asked you about whether  
27 you remember seeing a care plan when you reviewed the  
28 chart, does that ten-page document refresh your

1 recollection?

2 A. Yes.

3 Q. And how does it -- what do you recall now that you  
4 look at that document?

5 A. This is a document that -- it's called, "Resident  
6 Evaluation," which is equivalent --

7 THE COURT: Hold on.

8 Ladies and gentlemen, we're going to take our break  
9 now. Leave your notebooks on the chairs, remember the  
10 admonitions. I'll see you at 3:15.

11 Counsel, please approach.

12 **(The following proceedings were then had in open**  
13 **court, outside the presence of the jury.)**

14 THE COURT: Miss Clement?

15 MS. CLEMENT: Oh, I didn't hear you. Sorry.  
16 Sean?

17 (Whereupon an unreported bench conference was then  
18 had in open court between the Court and counsel.)

19 (Recess.)

20 (Change of court reporters.)

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1     **(The following proceedings were held outside the presence of**  
2                                   **the jury:)**

3             THE COURT: All right. At a break earlier one of our  
4     jurors, um, (Redacted), juror number 11, approached the  
5     court attendant and said that he had been approached by one  
6     of our other potential jurors and some comments had been  
7     exchanged. So I asked the court attendant to have (Juror  
8     No. 11) write down the nature of the exchange and give it to  
9     him and then give it to me.

10            This is what he got from him during the break.  
11     (Redacted), juror number 11. Juror number 2, which I  
12     believe is (Redacted), approached me at lunch break and  
13     said, I think you -- and there is something in parenthesis  
14     here -- you would make a good jury foreman. I did not  
15     respond. That is (Juror No. 11).

16            She then said, to the effect, I didn't think  
17     Mr. Amparo would make \$700,000 a year, maybe 250. She also  
18     said she had sympathy for Mr. Amparo as he had lost both  
19     parents as she had. Um, I told her, We should not discuss  
20     anything regarding the case. She agreed and moved away from  
21     me.

22            It's been my experience that from time to time, even  
23     though we tell jurors not to talk about the case amongst  
24     themselves, they will make comments. Usually what we hope  
25     for is what happened in this case, the other juror reminds  
26     that juror we are not supposed to talk about this case and  
27     the juror agrees.

28            There is several ways that I can handle this. I

1 wanted to talk to you about that before I brought the jury  
2 in. The first would be to just -- now that we are all on  
3 notice of this situation and since we have quite a ways to  
4 go yet in this trial would be for me to admonish the jury  
5 when they come back in from break that, um, they should not  
6 be talking even amongst themselves about this case and to  
7 keep an open mind until the end and remind them of their  
8 promise that this is not about them, this is about the  
9 parties that are in front of them, and leave it at that at  
10 this point. Should it come to pass that anything additional  
11 happens that involves juror number 2, then I think more  
12 serious action might need to be taken.

13 The one thing that is a little bit of concern is her  
14 statement that, um, she had sympathy for the witness because  
15 she had lost both her parents as he had, but that in and of  
16 itself doesn't tell us that she would be biased in favor of  
17 or against this witness because of that in the final  
18 analysis.

19 So my recommendation would be that I would just  
20 further admonish the jury at this point and we keep a  
21 watchful eye on the situation.

22 Ms. Clement, what would you like to tell me?

23 MS. CLEMENT: Well, to hear this on the third day of  
24 trial is very concerning as you can image for the  
25 Plaintiffs. I am speechless.

26 THE COURT: Why don't you think about it tonight? I  
27 don't think we need to do anything in particular at this  
28 particular moment, at least that would be my recommendation.

1 MR. REID: Maybe before we --

2 THE COURT: Mr. Reid?

3 MR. REID: I'm fine with the Court's proposal. If we  
4 put it over to tomorrow, maybe when they leave you could  
5 remind them of that anyway and then we can hear what  
6 Ms. Clement has to say tomorrow.

7 THE COURT: There is another option too as well. I  
8 can call her in, I can ask her questions outside the  
9 presence of the other jurors. I can call (Juror No. 11) in  
10 and ask him questions. Think about that tonight. The only  
11 problem potentially with that is it sets one -- it has the  
12 potential to set one juror up against another juror so early  
13 in this case.

14 MS. CLEMENT: I know.

15 THE COURT: But we have some options, and, um, I think  
16 we have some time on this, so perhaps we can all think about  
17 this this evening.

18 MS. CLEMENT: I think she is just -- my --

19 THE COURT: Think about it --

20 MS. CLEMENT: Yeah. Okay.

21 THE COURT: Think about it this evening before you --

22 MS. CLEMENT: I'm not committing to anything. I was  
23 just going to make a comment that she is very sweet and very  
24 chatty. She has a hard time just not chatting.

25 THE COURT: You both put her on this jury, not me.  
26 You know, my concern is that she remain fair and impartial  
27 and do what her oath required of her. I can remind her  
28 individually of that at a juncture where it doesn't appear



1 to offend her or embarrass her or set us up for a worse  
2 situation.

3 But, again, what I would like to suggest is think  
4 about it tonight, and we will talk about it tomorrow  
5 morning. I will remind them of their oaths before they  
6 leave today and then we will see where we go.

7 MR. REID: That is fine, your Honor.

8 THE COURT: Okay.

9 MS. CLEMENT: And we had reached an agreement on  
10 moving exhibits into evidence on the break, your Honor. I  
11 think we actually have an agreement now.

12 THE COURT: On multiple exhibits you mean?

13 MS. CLEMENT: Yes. Can we --

14 THE COURT: Let's do that at the end. I really don't  
15 like to keep the jury sitting out there.

16 MS. CLEMENT: Okay. It would affect him with this one  
17 exhibit.

18 MR. REID: Can we do this one?

19 MS. CLEMENT: It's none or all, sir.

20 THE COURT: All right. Let's see if we can perhaps  
21 finish with this witness or get close.

22 MR. REID: I was going to ask him -- we have had a  
23 misunderstanding, apparently. My understanding was there  
24 was no objection to these exhibits that I have been  
25 referring to. We have reached an agreement to admit this  
26 exhibit and many other exhibits. Ms. Clement is indicating  
27 that she wants to do them all at the same time, and I would  
28 really like, you know -- I do intend to ask him about these

1 documents, um, so I would -- if -- if -- if we have to do  
2 them all at the same time, can we do them real quick? She  
3 can list them out and get them on in five minutes so I can  
4 use this document.

5 THE COURT: Why don't we do it right now very quickly?

6 MS. CLEMENT: Okay.

7 THE COURT: Just tell me what you're agreeing to.

8 MS. CLEMENT: Um, Exhibit 1.

9 (Joint Exhibit 1 was marked for identification.)

10 THE COURT: In its entirety now?

11 MS. CLEMENT: Yes, your Honor.

12 THE COURT: Okay. Exhibit 1 is admitted.

13 (Joint Exhibit 1 was admitted into evidence.)

14 MS. CLEMENT: Exhibit 2, Exhibit 3, Exhibit 4, Exhibit  
15 5, Exhibit 9, Exhibit 13, 14, 15, 16, 17, 23, 24.

16 (Joint Exhibits 2, 3, 4, 5, 9, 13, 14, 15, 16, 17, 23 and 24  
17 were marked for identification.)

18 THE COURT: Wait, wait, wait. Not 22. 23, is that  
19 what you said?

20 MS. CLEMENT: 23, your Honor.

21 THE COURT: Okay. 24?

22 MS. CLEMENT: 24.

23 THE COURT: Uh-huh.

24 MS. CLEMENT: 25, 32, 42, 46, 73, 85.

25 (Joint Exhibits 25, 32, 42, 46, 73 and 85 were marked for  
26 identification.)

27 THE COURT: Hold on. Okay.

28 MS. CLEMENT: 88, 89.

1 (Joint Exhibits 88 and 89 were marked for identification.)

2 THE COURT: All of 89?

3 MS. CLEMENT: Yes, ma'am -- your Honor.

4 THE COURT: Not just a few pages.

5 MS. CLEMENT: Yes.

6 THE COURT: Okay.

7 MS. CLEMENT: 90, 92, 93, 94, 95, 96, 97, 99, 100,  
8 101, 102, 103, 104, 105, 109, 114. I -- I apologize, your  
9 Honor. I apologize. 109, I misspoke.

10 (Joint Exhibits 90, 92, 93, 94, 95, 96, 97, 99, 100, 101,  
11 102, 103, 104, 105 and 114 were marked for identification.)

12 THE COURT: Okay.

13 MS. CLEMENT: 118 has already been done. 130, 238  
14 through 251.

15 (Joint Exhibits 130, 238, 239, 240, 241, 242, 243, 244, 245,  
16 246, 247, 248, 249, 250 and 251 were marked for  
17 identification.)

18 THE COURT: Okay. Hold on. Okay.

19 MS. CLEMENT: And 255 and 256, your Honor, and that's  
20 it.

21 (Joint Exhibits 255 and 256 were marked for identification.)

22 THE COURT: Agree, Counsel?

23 MR. REID: Yes, your Honor.

24 (Joint Exhibits 2, 3, 4, 5, 9, 13, 14, 15, 16, 17, 23, 24,  
25 25, 32, 42, 46, 73, 85, 88, 89, 90, 92, 93, 94, 95, 96, 97,  
26 99, 100, 101, 102, 103, 104, 105, 114, 238, 239, 240, 241,  
27 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 255 and  
28 256 were admitted into evidence.)

1 THE COURT: All right. Can we get our witness in,  
2 please?

3 THE COURT: Let's try to go on the record at 8:50  
4 tomorrow morning to deal with this issue then.

5 MS. CLEMENT: Thank you, your Honor.

6 ---oOo---

7 JURY PRESENT

8 ---ooo---

9 THE COURT: You can all be seated. Thank you.  
10 Counsel.

11 MR. REID: Thank you, your Honor.

12 THE COURT: Ladies and gentlemen, while you were  
13 waiting outside one of the things we did was stipulate to a  
14 whole bunch of exhibits being admitted into evidence so that  
15 hopefully we can expedite some of the review.

16 Go ahead, Counsel.

17 MR. REID: Thank you.

18 Considering that stipulation, I would ask the Court  
19 permission to put up Exhibit 2, page 67?

20 THE COURT: Go ahead.

21 MR. REID: Thank you.

22 THE COURT: Except that our court attendant -- is he  
23 behind the screen there? Here he comes.

24 Can you get the lights for us too as you go past?  
25 Thank you.

26 MR. REID: Would you just highlight the top portion,  
27 please?

28 Q (By MR. REID) So, Mr. Amparo, when Ms. Clement was

1 asking you questions about care plan, and, um, you testified  
2 that you thought you remembered seeing, um, a care planning  
3 document in Mrs. Boice's chart, is this the document you  
4 were referring to?

5 A Yes.

6 Q Okay. And can you tell the jury what this document  
7 is?

8 A This document is called, um, resident evaluation, and  
9 on top it says "resident baseline information." I'm very,  
10 very particular or very, very familiar with this form. This  
11 is a form that I personally develop. I personally designed  
12 from the font. It's a tool that I develop when I first  
13 became an employee of Summerville. So at the time of merger  
14 it was also the same tool that I carried forward to be  
15 utilized in our communities that became part of the two  
16 companies. So being the author and the person who designed  
17 this document, my whole intent for this document is to be  
18 utilized by the staff as a service plan equivalent to a care  
19 plan. And the information that you would see in this  
20 document would be very similar to, um, the document that the  
21 State, um, would offer communities to use, um, as a service  
22 plan.

23 Q Thank you.

24 Now, um, it is a 10-page form, correct?

25 A That is correct.

26 Q All right. And, um, if you can go back a whole page.  
27 We will get through quickly.

28 Can you tell the jury, looking at the first page

1    what -- what -- what's the, um, resident care director  
2    supposed to be doing in this -- on this first page of the  
3    document?

4    A       Well, the first page basically gives you information  
5    about, um, resident name, the physician and date of birth,  
6    reasons for the evaluation. And it says here whether it's a  
7    pre move-in, initial 30-day, etcetera. It also provide --  
8    would provide the RCD and the staff information about  
9    responsibility and legal guardian and some disease diagnosis  
10   that, um, were identified by the physician and any  
11   information here not only in the first page, basically on  
12   all of the pages, any information here that would be  
13   pertinent in the care of the resident could be, um,  
14   communicated using that communication log that we have  
15   mentioned earlier.

16   Q       Okay. The second page, what kind of information is  
17   the RCD looking for there?

18   A       The information that the RCD would be looking for  
19   would be, again, um, on the right-hand side as you could  
20   see, other health conditions, um, it would also, um,  
21   identify conditions that would, um -- at the time licensing,  
22   um, would ask communities to, um, submit what we call  
23   exemptions. If you would see the, um, the items listed here  
24   under this category, oxygen, side rails, nebulizer, Hospice,  
25   um, etcetera, are -- are some of the conditions that would  
26   necessitate for the community to -- to get those exemptions,  
27   so it becomes more of a reminder.

28           And then we also have a portion for comments, and then

1 a portion for, um, um, for medications and determine, um,  
2 assistance that they -- they are going to need or the  
3 resident is going to need.

4 Q And now the -- the medications box is blank there.  
5 Would it be appropriate for there to be a separate page with  
6 the medications, um, rather than filling it out on this  
7 section here?

8 MS. CLEMENT: Leading.

9 THE COURT: Sustained.

10 Q (By MR. REID) Um, would the -- pursuant to the  
11 expectations that you have in completing the form, um, what  
12 manners, if any, other than putting medications on this  
13 form, would be appropriate?

14 MS. CLEMENT: It's leading, it exceeds the scope, your  
15 Honor.

16 THE COURT: It's not leading.

17 Um, my understanding was that this was being offered  
18 as some type of substitute care plan, correct?

19 MR. REID: It's being offered as a care plan, your  
20 Honor.

21 THE COURT: It's being offered as a care plan?

22 MR. REID: Correct.

23 THE COURT: He can answer.

24 THE WITNESS: This portion under medications is a  
25 document that, um, that, um, resident care director or  
26 whoever is filling it out to list down the medications so  
27 it's a lot easier, but it's not unusual for, um, the person  
28 filling this out to directly, um, write those medications on

1 the MAR, medication administration record.

2 Q Okay. The next page, please.

3 Now, um, just very briefly, what type of information  
4 is the resident care director, um, acquiring here?

5 A Um, for this particular page it would be giving the  
6 resident care director or his or her designee information  
7 about the skin condition of that resident upon, um,  
8 evaluation or assessment. Um, it also would give, um, the  
9 staff information about the cognitive status, um, involving  
10 memory, um, involving their ability to be understood and  
11 ability to understand others. Um, on this same page also  
12 under this category it would also allow the staff to have  
13 information pertaining to sensory, cognitive, mood and  
14 behavior baseline data and that would include, at least on  
15 this page, information about the resident's capacity or  
16 ability to hear and, um, resident's capacity and ability to  
17 communicate using his or her speech.

18 Q Okay. In the middle of the page there -- there is a  
19 zero under the points column. Do you know what that means?

20 A Basically if you look on the left-hand side, um, of  
21 the form, um, there are like zero 2, 3, 4, zero 2, 3, 2, 2,  
22 1, zero -- are you guys following me? So these are the  
23 points that are assigned to determine, um, where the  
24 resident is.

25 So for this particular resident, if you see the first  
26 one it says hears adequately, uses hearing and aid  
27 independently. So the person who did the assessment, um,  
28 said yes, so it was zero. But if, let's say, the resident



1 involved has difficult -- minimal difficulty hearing in  
2 special locations only, then the score would be a 2.

3 Q Got ya. Okay. Next page. Now, there is a 5 in the  
4 box at the top on, um, the fourth page. Um, what is -- what  
5 is that indicative of?

6 A Okay. Page 4 is a continuation of page 3 under  
7 communication and speech. So, um, on -- on page 3 zero says  
8 communicates clear, 3 says minimal difficulty in  
9 communicating.

10 For this particular resident it was identified at the  
11 time of assessment that there was a severe speech  
12 communication impairment. And if I remember right,  
13 reviewing the record, um, I think Mrs. Boice, um, was  
14 diagnosed with, um, um, inability to -- to speak, so they --  
15 they gave her a score of 5. And then -- oh, sorry.

16 On that same form you could see that it's blank on the  
17 left-hand side -- are you guys following me -- because when  
18 they punched holes, that number got erased.

19 Q So, um, to -- to move ahead then, um, in this -- in  
20 this document, um, the resident care director is going to  
21 be, um, making observations about mental and behavioral  
22 status; is that correct?

23 A Um, on this form if we continue there is -- there is a  
24 section here asking about the mental and behavioral status  
25 of the resident involved, and this particular resident, um,  
26 she scored 6, 4 and 3.

27 THE COURT: Hold on. Let's go question by question.

28 MR. REID: Right.

1 Q (By MR. REID) Um, so I guess that was a yes or no  
2 question.

3 A Oh, I'm sorry.

4 Q Um, the form also asked the evaluator to assess the  
5 behavioral and mental, um, presentation of the patient,  
6 right?

7 A The resident, yes.

8 Q Of the resident. Sorry. And in this instance, um,  
9 how did -- how did the resident care director assess  
10 Ms. Boice?

11 A Um, based on this assessment Mrs. Boice scored 6, 4  
12 and 3 for the following reasons: The 6 pertains to the  
13 resident, um, at the time of assessment being totally  
14 confused and very forgetful and would require ongoing  
15 reminders. She also scored a 6 requiring safety check every  
16 shift, and, um, a 3 where it was identified that, um,  
17 occasionally Mrs. Boice, um, had episodes of resisting, um,  
18 care.

19 Q Okay. Um, so in this instance, um, I think you  
20 misspoke, she required a safety check every shift and that  
21 was a score of a 4, correct?

22 A Yes.

23 Q Now, here we have two boxes for resist care. She got  
24 a -- the score of 3. Um, in what circumstance, if you know,  
25 would the resident care director put a 6 there?

26 MS. CLEMENT: Objection, your Honor, it's speculative  
27 as to what the resident care director would have done in  
28 this instance.

1 THE COURT: As phrased, sustained.

2 MR. REID: Okay.

3 Q (By MR. REID) Um, as in assessing a resident, um, how  
4 would -- how is a person doing the assessment instructed to  
5 complete the form when you have two boxes that say -- that  
6 are entitled the same thing, resist care?

7 MS. CLEMENT: Lacks foundation regarding this  
8 particular RCD, what her training was.

9 THE COURT: Sustained on spec -- sustained on  
10 foundation.

11 Q (By MR. REID) Let's move on.

12 What is the next section intended to assess?

13 A We are now on the same page, this is like at the  
14 bottom of the form, it's also asking the assessor to  
15 identify, um --

16 Q Vision needs?

17 A -- vision needs.

18 Q Okay. Let's go to the next page, please.

19 The first section, section 2-A on the -- on the next  
20 page, what is that assessing?

21 A Um, that is assessing the ability of the resident, um,  
22 involving mobility, um, ambulation and modes of locomotion,  
23 meaning to say ability to move around.

24 Q All right. In this instance Ms. Boice scored an 8?

25 A That is correct.

26 Q And then how about the next section, what is that  
27 intended to assess?

28 A The next section pertains to gait and balance.

1 Basically resident's ability to -- to stand.

2 Q And what is gait?

3 A Gait pertains to the ability of the resident to  
4 maintain balance.

5 Q Okay. And how about walking, is gait and balance,  
6 does that have anything to do with walking?

7 A Yes.

8 Q Now, let's look at section 2-C. What is 2-C intended  
9 to -- to assess for a resident?

10 A This now pertains to the resident's ability to  
11 transfer. And as you could see, in closed parenthesis it  
12 says how resident moves between surfaces, to/from bed or  
13 wheelchair.

14 Q Okay. Now, can -- can -- in the use of a form like  
15 this, can you check multiple boxes and they become additive  
16 or do you just check one box?

17 MS. CLEMENT: It's leading.

18 THE COURT: Sustained.

19 Q (By MR. REID) I notice that there is multiple boxes  
20 being checked. Is that -- is that the intended use of the  
21 form?

22 A There -- there are parts of this form that would be  
23 okay to have two, um, boxes that would be checked, but there  
24 is portions of it that, um, would necessitate for the  
25 assessor to check one box.

26 Q All right. In the interest of time we see the next  
27 section that deals with assistive adaptive devices; is that  
28 right?

1 A Yes.

2 Q What are assistive adaptive devices?

3 A Assistive devices are devices that could be utilized  
4 by a resident in order to perform his or her activities of  
5 daily living. It could be using a walker or a wheelchair or  
6 a cane. Um, those are examples.

7 Q Next page. The next section is dressing. What's  
8 being, um -- what is being assessed there?

9 A Now here, um, the assessor is being asked to identify  
10 the needs of the resident, um, pertaining to their ability  
11 to, um, dress themselves. As you could see, it's in closed  
12 parenthesis. It would be asking the assessor to identify  
13 how, um, the resident is able to fasten, you know, clothing,  
14 um, resident's ability to take off, um, their clothes and  
15 that would also be including, um, donning and removing of  
16 any prosthesis, that is like an artificial, um, part of the  
17 body that is present at the time of the evaluation or  
18 assessment.

19 Q The next section, um, addresses any -- what is that  
20 intended to assess?

21 A Um, this one pertains to personal hygiene, basically  
22 asking the assessor to identify the resident's ability and  
23 type of assistance required to wash their face, brush their  
24 teeth, dentures, if it's applicable, and, um, brushing or  
25 combing his or her hair.

26 Q Okay. The next section, what is that intended to  
27 assess?

28 A This time it would be asking information about bathing

1 and showering. So, again, um, the assessor would be  
2 identifying the type of assistance, um, that the resident is  
3 going to require to -- to meet the needs under this  
4 category.

5 Q Okay. How about the next page, what -- what's the  
6 first category there?

7 A The next page, on page 7, on the very top it's  
8 toileting. This particular section of the evaluation, um,  
9 it would be asking about the resident's ability to use  
10 toilet room, um, commode, if -- if -- if there is a commode,  
11 um, bed pan, urinal transfers on and off toilet, any, um,  
12 cleanses in changes involving underpads or pads.

13 Q Next section, what is that intended to assess?

14 A The next section is under nutrition and eating,  
15 basically trying to identify how much assistance the  
16 resident is going to require, um, in terms of meeting his or  
17 her needs under, um, dining services or nutrition.

18 Q Okay. And, um, the next section, what's that for?

19 A The next section is under medication. Um, we have  
20 residents sometimes who would manage their own medications  
21 independently, but this is a section that we would like for  
22 our staff to complete, assessor to complete to determine,  
23 um, how -- what kind of assistance and how frequent of  
24 assistance they are going to need under medication  
25 management.

26 Q All right. And the next section?

27 A The next section, um, like at the middle of the page  
28 because the first part of the page is a continuation under

1 medication, um, middle of the page now asks about diabetic  
2 management, basically identifying if the resident is  
3 diabetic or not and what type of, um, assistance or reminder  
4 is necessary.

5 Q Okay. How about the next section?

6 A The next section now pertains to what we call special  
7 treatment needs nursing services. So now this would mirror  
8 the, um -- some of the items that I had mentioned on the  
9 second page of this evaluation pertaining to use of those,  
10 um, special equipments such as oxygen, etcetera.

11 Q Okay. The next page, what's on that next page there?

12 A Um, the second-to-the-last page is still a  
13 continuation of special treatment but below that --

14 Q Uh-huh.

15 A Sorry. Below that if for any reason the resident is  
16 on Hospice, um, we are not only asking them to check the box  
17 here, we also would like for them to -- if we could show it  
18 on the right-hand side because I think that is very  
19 important -- um, we are asking for the name of the Hospice,  
20 the phone number, and the contact person so that, um, in  
21 that way, um, that gives the staff the ability to coordinate  
22 with third party providers. And that is true for the other  
23 ancillary services, um, such as home health, um, podiatry,  
24 rehabilitation, um, third parties.

25 Q Got ya. Okay. And then there is apparently sections  
26 for bed rail, bedridden and tube feeding?

27 A That is correct.

28 Q All right. How about the next page?

1       A       And the last page of the document would be asking for  
2       what we call, um, personal services, housekeeping services,  
3       um, laundry services, um, if the resident is smoking, um, we  
4       also -- in certain communities that it's allowed we also  
5       have to evaluate to determine what type of assistance they  
6       are going to need to ensure their safety.

7       Q       And in this instance, um, with Ms. Boice, this  
8       assessment was done on September 12th, 2008?

9       A       Yes.

10      Q       Okay. And the box on the left, the signature in the  
11      top box, that's intended to be who?

12      A       Um, that's the signature of Peggy Stevenson who is a  
13      registered nurse and was the resident care director at the  
14      time.

15      Q       And then the box below that, what -- who -- what  
16      individual is intended to sign that box?

17      A       Um, well, this is an area where we are asking a  
18      signature, initial of the resident, if the resident is able  
19      to initial, or responsible party. For this particular  
20      document, um, this was, um, initialed by, um, Kathleen  
21      Boice.

22             MR. REID: All right. Thank you, sir.

23             THE WITNESS: You're welcome.

24             MR. REID: Those are all of the questions I have.  
25      Thank you, your Honor.

26             THE COURT: Can we get the lights, please?

27             MR. REID: Oh, your Honor, I apologize, I did have one  
28      last question, if you don't mind. Is that okay?



1 THE COURT: Okay.

2 MR. REID: I know it's late.

3 Q (By MR. REID) You were asked about your depositions.  
4 Um, do you -- do you have a memory of the depositions? It  
5 was suggested to you that there was one and then a long  
6 break and then another and then a long break and then  
7 another and a long break. Is that how those depositions  
8 occurred?

9 A No.

10 Q How did the depositions occur?

11 A It was a total of three days. The first two were two  
12 consecutive days. The first one started around 10:00,  
13 10:30, we ended up at around 5:00. The second one, which  
14 was the next day, um, similar time, around 10:00, 10:30,  
15 ended up at 5:00. And then thirteen days later we had the  
16 the third, um, day of deposition which, again, start, um,  
17 time very similar, and I think we ended at 5:30, if I'm not  
18 mistaken.

19 MR. REID: Thank you.

20 FURTHER RECROSS-EXAMINATION

21 BY LESLEY A. CLEMENT, Attorney at Law, Counsel on behalf of  
22 the Plaintiffs:

23 Q I apologize. Did you check something about the  
24 deposition dates on the break?

25 A Yes.

26 Q Okay. Well, I apologize if I have misspoke. I have  
27 taken sixty depositions in this case --

28 THE COURT: Okay.

1 MS. CLEMENT: -- so I do apologize about that.

2 THE COURT: All right.

3 MS. CLEMENT: If I misspoke --

4 THE WITNESS: And I'm also --

5 THE COURT: Wait, wait. This is not a conversation.  
6 Ask questions.

7 Q (By MS. CLEMENT) Did someone tell you who initialed  
8 the resident evaluation?

9 A No.

10 Q On behalf of the family?

11 A No.

12 Q You knew the initials of Kathleen Boice?

13 A No.

14 Q How did you know it was Kathleen Boice?

15 A I guess it's the initials Kathleen Boice. And I --  
16 when I review the record I -- I was assuming that it was  
17 Kathleen Boice.

18 Q Can we get that up there for us? Thanks. It's  
19 Exhibit 2, page 76.

20 So you recognize that initial as Kathleen Boice?

21 A I made that assumption.

22 Q Nobody told you that?

23 A No.

24 Q Okay. Um, you went through this whole document, and  
25 the purpose of this was, you told us, this was a care plan,  
26 right?

27 A Yes.

28 Q Do you see anywhere on here where it says care plan?

1 Back it up.

2 A No.

3 Q Can you highlight the title of this document?

4 That is an evaluation, right?

5 A Right. And I think I mentioned earlier --

6 Q The question has been answered, sir.

7 Care plan is a document which identifies a problem, a  
8 goal, a plan to address that problem and the discipline or  
9 the person who is going to complete that plan, correct?

10 A Yes.

11 Q Now, Eric, can you take us to the bottom of this page,  
12 the very bottom where we have got the total for each  
13 section? Pull that up for us. Just -- it's the very last  
14 boxes right there. Can you center that? The cart got  
15 moved? Okay. Let me see if I can sort that out.

16 Is that good? Can everyone see that?

17 Any scores?

18 A No.

19 Q Um, any goals planned?

20 Can you back this out and go to the right-hand side on  
21 the goals and outcomes for personal services, if we can see  
22 that? Just to the right, goals and outcomes. The right of  
23 housekeeping. To the right. Sorry, honey, to the right.  
24 The other right. Yeah, that one.

25 AUDIENCE MEMBER: There you go.

26 MS. CLEMENT: Okay.

27 Q (By MS. CLEMENT) Any goals listed there? This is  
28 page 76.

1 A No.

2 Q Okay. Let's go to the page prior to that. Um, let's  
3 back up another page since there is no goals on that page.  
4 Any goals on this page?

5 A No.

6 Q Let's just save the jury time. It's a 10-page  
7 document. Go through every page, tell us if there is a  
8 single goal anywhere on this document?

9 A I don't see any.

10 Q Okay. And there was no points ever scored up totally  
11 for her?

12 A On the last page, none.

13 Q Eric, could you take us to page 74, medications, top  
14 three boxes? Could you open it up? Could you highlight  
15 number 2?

16 Mrs. Boice, according to this evaluation, um, received  
17 PRN medications -- that is as-needed medications?

18 A Yes.

19 Q One to three times a day?

20 A Yes.

21 Q And the staff was supposed to check the availability  
22 and order the medications?

23 A Yes.

24 Q And if you go -- can you highlight number 4?

25 The medications were received in non-standard format?

26 A Yes.

27 Q That requires a lot more work and knowledge of the  
28 staff, correct?

1 A I'm sorry, I missed that.

2 Q Non-standard format, do you know what that means, sir?

3 A Yes.

4 Q What does that mean?

5 A That means that, um, the medications are not being,  
6 um, ordered through our, um, normal preferred pharmacy so  
7 the packaging would be different.

8 Q Right. So that means that what you told us earlier  
9 about that pharmacy and everything coming in together, that  
10 wasn't something that was in place in 2008 when Mrs. Boice  
11 was there, correct?

12 A No.

13 Q Is that correct?

14 A Yes. Sorry.

15 Q And, um, let's go back up to page number -- I think we  
16 skipped over this just a little bit. It's page number 71  
17 under gait and balance and 6 and 4. Actually, if you could  
18 just take, um, it's -- excuse me. I'm sorry. It's 2-C,  
19 transfer. If you can take that and blow that section up,  
20 the whole section, 2-C, do you see that? It's after -- it's  
21 on transfer. So take that whole section, including goals  
22 and outcomes, blow that baby up. Yeah.

23 Can everyone see that? Okay.

24 So this was Peggy's evaluation of how Mrs. Boice moved  
25 between surfaces, to and from a bed, a chair, a wheelchair,  
26 correct?

27 A Yes.

28 Q So according to Peggy she was a maximum assist with

1 transfers, 4 points, and a standby assist with transfers, 6  
2 points?

3 A Yes, according to the document.

4 Q And that meets the definition of bedridden, correct?

5 MR. REID: Lacks foundation, your Honor.

6 THE COURT: Overruled.

7 THE WITNESS: Not necessarily.

8 Q (By MS. CLEMENT) Okay. So you disagree with, um,  
9 your co-pillars who have -- who will testify that, um,  
10 needing assistance to get in or out of bed qualifies as  
11 bedridden?

12 MR. REID: Your Honor, that is a improper question.  
13 There is no --

14 THE COURT: I'm sorry, I can't hear you.

15 MR. REID: That question assumes facts not  
16 established, who is testifying. It's argumentative.

17 THE COURT: Sustained.

18 Q (By MS. CLEMENT) Who are your co-pillars?

19 Can you turn the lights back on?

20 MR. REID: That exceeds the scope of my redirect, your  
21 Honor.

22 THE COURT: Well, we are getting into this issue. You  
23 have placed this as a equivalent of a care plan.

24 MR. REID: Right.

25 THE COURT: He has stated that this evaluation or this  
26 care plan, whatever this is, says, according to him, that  
27 she is not bedridden. She can follow a little bit down that  
28 line if she would like to, a little bit.

1 MR. REID: The last question that -- I apologize.

2 THE COURT: We are done.

3 MR. REID: Okay.

4 THE COURT: Go ahead, Ms. Clement.

5 Q (By MS. CLEMENT) Who are your co-pillars that you've  
6 described today?

7 A My co-pillars are operations and, um, sales and  
8 marketing.

9 Q Okay. So operations would be like the vice president  
10 of operations, senior -- the chief operating officer,  
11 executive vice president of administration?

12 A Yes.

13 Q And, um, we will move on to a different topic, but  
14 just to make clear, this is not a care plan for Mrs. Boice,  
15 correct?

16 A It is the care plan for Mrs. Boice.

17 Q And -- and that's your sworn testimony?

18 A Yes.

19 MR. REID: Objection, your Honor, that is  
20 argumentative.

21 THE COURT: Can we please move on?

22 MS. CLEMENT: Yes.

23 Q (By MS. CLEMENT) You talked about communication log  
24 utilized by the staff. I think your testimony, the gist of  
25 it, was that the communication log can be used in lieu of  
26 charting in the permanent record; is that your -- is that  
27 my -- is my understanding correct?

28 A No.

1 Q Because the communication log is not in compliance  
2 with the Title 22 regulations that require documentation as  
3 we looked at through the policies of changes in condition,  
4 notification to the family, notification to the doctor, care  
5 planning, etcetera?

6 MR. REID: Your Honor, it's compound, it assumes facts  
7 not established. It's talking about Title 22 which we  
8 haven't talked about at all.

9 THE COURT: Sustained.

10 Q (By MS. CLEMENT) A communication log is something  
11 that, by Emeritus's own policy, is destroyed every seven to  
12 fourteen days?

13 THE COURT: Are you asking him that question?

14 MS. CLEMENT: Yes.

15 THE WITNESS: All I can say is I know we don't keep it  
16 for a very long time, and I couldn't recall exactly as to  
17 how many days we keep them.

18 Q (By MS. CLEMENT) Well, you weren't meaning to suggest  
19 in your testimony that the communication log is a substitute  
20 for alert charting in the resident's record as required by  
21 the policies, were you?

22 A Could you ask the question again? I'm sorry.

23 Q Did you mean to tell the jury that the communication  
24 log that is destroyed on a regular basis is supposed to be a  
25 substitute for alert charting as required by the -- the, um,  
26 policies of Emeritus?

27 A No.

28 Q And it's not -- the communication log isn't supposed



1 to be some kind of a substitute for all of the documentation  
2 that is required by the regulations, correct?

3 A That's correct.

4 Q Now, when I asked you a question earlier, I think it  
5 was before lunch, about your compensation, I didn't ask you  
6 about your salary, I asked you how much money you made. So  
7 the question on, um, cross was -- or redirect, excuse me --  
8 was what was your salary. You told us your salary was  
9 \$250,000. Was that for last year?

10 A Yes.

11 Q But in addition to that salary you have other forms of  
12 compensation from Emeritus, correct?

13 A Yes.

14 Q And those other forms of compensation include option  
15 awards, stocks?

16 A Yes.

17 Q Restricted stock awards?

18 A Not around the time, no.

19 Q Last year?

20 A Yes.

21 Q Incentive plan compensation?

22 A I don't know what incentive plan compensation would  
23 entail.

24 Q You get non equity incentive plan compensation?

25 A I still don't know.

26 Q Like a pension from them annually?

27 A No, not that I know.

28 Q You get other forms of compensation too, like bonuses,

1 correct?

2 A Yes.

3 Q When you add up all of your compensation from last  
4 year, including all of the stocks you were awarded, that  
5 totaled just about \$700,000, didn't it?

6 A No, because the stocks is not something that I could  
7 touch, depending on the value. So the way it works is if  
8 it -- if the stock was granted, let's say, at, um, 27  
9 dollars and the value of the stock is below that, it's  
10 equivalent to zero.

11 Q Right. But the stock today isn't equivalent to zero,  
12 is it, Mr. Amparo?

13 A But at the time the stock that you're talking about is  
14 below -- definitely way below the value. It was worth  
15 nothing.

16 Q Are you talking about -- I'm sorry, I am not  
17 understanding. You got an award of stock last year and you  
18 get an award of stock every year, correct?

19 A Yes.

20 Q And when you got that award of stock it wasn't worth  
21 nothing?

22 A No, that is not what I said.

23 Q It's -- it's --

24 A I said that at the time that it was granted it would  
25 be based on that value. So over time -- oh, and it's not  
26 something that vests. Let's say you get X number of amount,  
27 it doesn't vest all automatically in one year, it would vest  
28 four consecutive years, so 25 percent, 25 percent. But if

1     you're going to look at the amount of stocks that was  
2     granted that year, then it would encompass the total amount.

3     Q       And you actually own over 65,000 shares of Emeritus  
4     stock that have been granted to you, correct?

5     A       I don't know. I don't track it.

6            MS. CLEMENT: Thank you, Mr. Amparo. I have no  
7     further questions.

8            THE COURT: Anything else?

9            MR. REID: No, your Honor.

10          THE COURT: Ladies and gentlemen, this would be the  
11     time if you have any questions for this witness to write  
12     them down. I'm going to give you a couple of minutes to  
13     think about this. Write them down and our court attendant  
14     will collect them. There are more. All right.

15          Counsel approach, please.

16                   (Sidebar conference was held.)

17          THE COURT: Oh, we have two more? Hold on a second,  
18     Counsel.

19          Remember, I have to be able to read your handwriting.  
20     Print.

21                   (Sidebar conference continued.)

22          THE COURT: Okay. Ladies and gentlemen, I want to  
23     remind you that if your question doesn't get asked, um,  
24     that's my determination, not the attorneys. Also, you may  
25     hear me tweak or modify your question a little bit because  
26     sometimes the way you've asked the question it's not quite  
27     in the proper form, but I have talked about that with  
28     Counsel. Also, I want to remind you that when you pose your

1 questions they should be posed as neutrally as possible.  
2 You are not advocating for one side or the other and, also,  
3 you are not commenting on the evidence. The only time you  
4 get to comment on the evidence is when you are in the jury  
5 room with your fellow jurors after all of the evidence is  
6 in. So don't send me any notes that say anything about what  
7 you think about the evidence, okay. All right.

8 Sir, we allow our jurors to ask questions, so I'm  
9 going to ask you these questions and then, um, if you would  
10 please turn and, um, respond to the jury.

11 THE WITNESS: Yes.

12 THE COURT: Based on your position within Emeritus, do  
13 you believe that the document that was on the overhead, the  
14 resident evaluation for Joan Boice, should have had goals  
15 written down on it?

16 THE WITNESS: Yes.

17 THE COURT: What is the current trading price of  
18 Emeritus stock?

19 THE WITNESS: I haven't had a chance to check today,  
20 but yesterday I think it was 25 dollars a share.

21 THE COURT: Are family members of those who are in the  
22 assisted care facility informed when a staff position is  
23 open and unfilled?

24 THE WITNESS: I'm not sure because it would depend on  
25 the executive director of the community. Um, so I'm not  
26 sure if that's something that they share or they do share or  
27 they don't.

28 THE COURT: Who at a facility or who at Emeritus is

1 responsible to contact family members when a resident is  
2 taken to the doctor after a fall?

3 THE WITNESS: Um, it -- it depends on the time of the  
4 day. We do not have nurses, um, 24 hours a day. So let's  
5 say, um --

6 THE COURT: The question is, who is responsible?

7 THE WITNESS: Okay. Um, when there is a resident care  
8 director, it would be the resident care director or the  
9 person who had witnessed the, um, alleged fall or actual  
10 fall.

11 THE COURT: All right. Sir, are you familiar with the  
12 regulations under Title 22 that have been discussed here  
13 over the last couple of days?

14 THE WITNESS: I would say pretty much.

15 THE COURT: Okay. So with respect to Title 2, um,  
16 what types of training on a yearly basis are required for  
17 persons working in an assisted care facility?

18 THE WITNESS: That is a part of the regulation that I  
19 didn't memorize because there would be certain hours, and I  
20 don't want to quote hours.

21 THE COURT: Okay. So sitting here right now you can't  
22 tell us that?

23 THE WITNESS: Yes.

24 THE COURT: Do you know whether or not all of the, um,  
25 employees who were subject to training requirements were  
26 up-to-date in their training when Mrs. Boice was in  
27 residence at the Emeritus facility?

28 THE WITNESS: Personally, no.

1           THE COURT: When Mrs. Boice was admitted to the  
2 facility was a current 602 on file?

3           THE WITNESS: Yes.

4           THE COURT: Was it in hand at the time she was  
5 admitted?

6           THE WITNESS: Yes.

7           THE COURT: Does Title 22 spell out the minimum number  
8 of staff necessary to work at an assisted living facility?

9           THE WITNESS: No.

10          THE COURT: Does Title 22 set out the minimum  
11 qualifications for persons who work at an assisted living  
12 facility?

13          THE WITNESS: I'm not sure. I couldn't answer that as  
14 I sit here today.

15          THE COURT: Um, anywhere within Title 22 any type of  
16 ratios given as to the number of caregivers versus the  
17 number of residents?

18          THE WITNESS: No.

19          THE COURT: Is it your understanding that when anyone  
20 reports a problem of neglect or abuse within the Emeritus  
21 employee family that Emeritus is supposed to report this to  
22 the Department of Social Services?

23          THE WITNESS: Yes.

24          THE COURT: And based upon your understanding of how  
25 Emeritus is set up, who has the ultimate responsibility for  
26 reporting problems of neglect or abuse, um, when it occurs?

27          THE WITNESS: The person who made the allegation or  
28 had witnessed it.

1           THE COURT: Um, is it -- is it not the ultimate  
2 responsibility of quality control to make sure that these  
3 reports are made?

4           THE WITNESS: Yes.

5           THE COURT: Well, that is a is it or is it not?

6           THE WITNESS: I'm sorry.

7           THE COURT: It's okay.

8           THE WITNESS: Could you kindly repeat the question?

9           THE COURT: Is it the ultimate -- I will phrase it  
10 this way: Is it the ultimate responsibility of quality  
11 control for Emeritus to make sure that reports are made to  
12 the Department of Social Services for neglect or abuse that  
13 are witnessed by or learned by Emeritus staff?

14          THE WITNESS: If we know about it, yes.

15          THE COURT: Ms. Clement, do you wish to follow-up?

16          MS. CLEMENT: Yes, your Honor. Thank you.

17                               FURTHER RECROSS-EXAMINATION

18 BY LESLEY A. CLEMENT, Attorney at Law, Counsel on behalf of  
19 the Plaintiffs:

20 Q       Mr. Amparo, Emeritus has to at all times have enough  
21 staff to meet the needs of each of its residents according  
22 to Title 22, correct?

23           MR. REID: Your Honor, I think that's been asked and  
24 answered. I'm not sure it relates to the specific questions  
25 that have been asked here.

26           THE COURT: Are you asking in the context of Title 22?

27           MS. CLEMENT: Yes.

28           THE COURT: Rephrase, please.

1 Q (By MS. CLEMENT) Title 22 requires that Emeritus at  
2 all times have enough staff in both numbers and competency  
3 to meet the needs of each of its residents?

4 A Yes.

5 Q When you testified that Emeritus has a current 602 or  
6 physician's report on file for Mrs. Boice, did you misspeak?

7 A No.

8 Q Emeritus's policy is to have a -- a, um, current  
9 physician's report within 30 days of the resident being  
10 admitted to the facility, correct?

11 A The Emeritus policy is 30 days, but state requirement  
12 is anything that's current is -- is acceptable.

13 Q Okay. So this is one of those times where you're  
14 saying the policy doesn't have to be followed with regard to  
15 the 602 forms; is that true?

16 A Well, our goal is to follow the policy.

17 Q So you admit that at this time Emeritus did not follow  
18 its own policy with regard to getting a current 602 for  
19 Mrs. Boice, correct?

20 A In terms of time frame, yes.

21 MS. CLEMENT: Thank you, Judge.

22 MR. REID: I don't have anything further, your Honor.

23 THE COURT: Any other questions, ladies and gentlemen?

24 All right.

25 May we excuse this witness?

26 MS. CLEMENT: Yes.

27 MR. REID: Yes. I may -- I would ask him to be  
28 subject to recall in my case-in-chief.



1           THE COURT: All right. Mr. Amparo, if you hear from  
2 your attorney, come back.

3           MR. REID: If I can get a hold of him.

4           THE COURT: Okay. Thank you very much, sir. You can  
5 step down. All right.

6           Ladies and gentlemen, before I excuse you till 9:00  
7 a.m. tomorrow morning, um, I wanted to remind you of a  
8 couple of things. One of the things that is very, very  
9 important, and one of the admonitions that I read to you at  
10 the very beginning of this trial, is that you are not to  
11 talk to each other about this case. I know it's often hard,  
12 the natural inclination since you are all on a jury together  
13 to perhaps want to talk a little bit about what you're  
14 hearing, but you can't do that. You have to wait.

15          There cannot be any discussions even amongst  
16 yourselves. Even what might seem like an innocent  
17 discussion amongst yourselves about any of the evidence or  
18 how you are acting or reacting to any of the evidence  
19 because arguably it could appear to be you're attempting to  
20 influence another juror improperly before you're in the jury  
21 room, or arguably it could appear that you are biased or  
22 prejudiced and have made up your mind before you've actually  
23 heard all of the evidence in the case. So the admonitions  
24 that I gave you at the beginning of the trial are very, very  
25 important. And I know this is not an easy thing to do, but  
26 it's absolute mandate that you have no conversations amongst  
27 yourselves or with anyone you know about anything relating  
28 to this case until after the verdicts come in and I tell you

1     you can do that.

2             Does everybody understand that?   Okay.

3             So I will see you all tomorrow morning at nine  
4     o'clock.   Leave your notebooks on the chairs.   Remember  
5     these admonitions.   We are in recess.

6     **(The following proceedings were held outside the presence of**  
7                             **the jury:)**

8             THE COURT:   Okay.   We have a new witness tomorrow?

9             MS. CLEMENT:   She has been waiting outside all day,  
10     your Honor.

11            THE COURT:   Okay.   Hopefully we can pick up the pace a  
12     little bit.

13            MR. REID:    I hope so.

14            THE COURT:   I will see you tomorrow morning at nine  
15     o'clock.

16            We are in recess.

17                           (Evening recess.)

18                           (Case continued to 1/10/13.)

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